



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

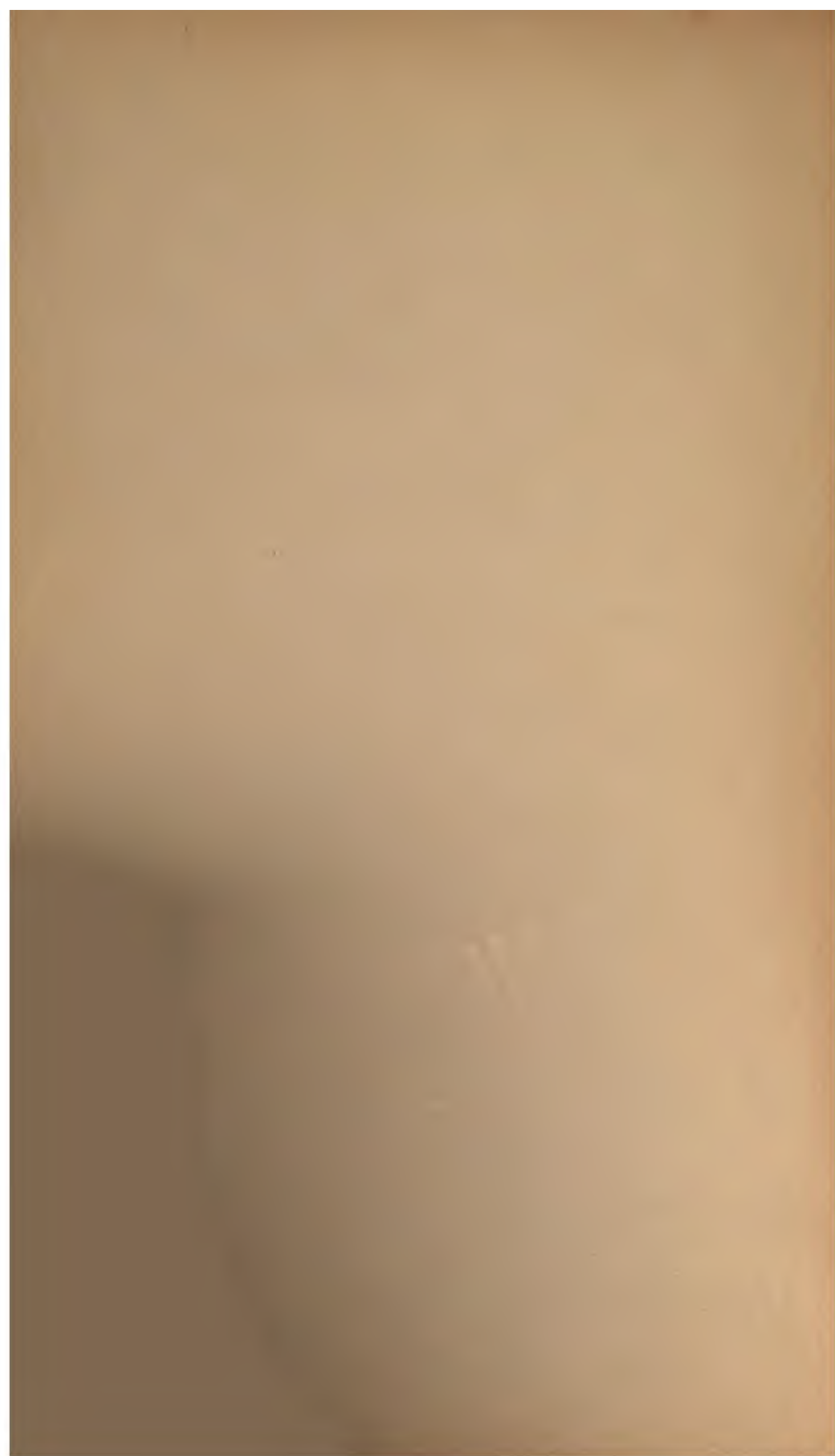
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NTPL RESEARCH LIBRARIES

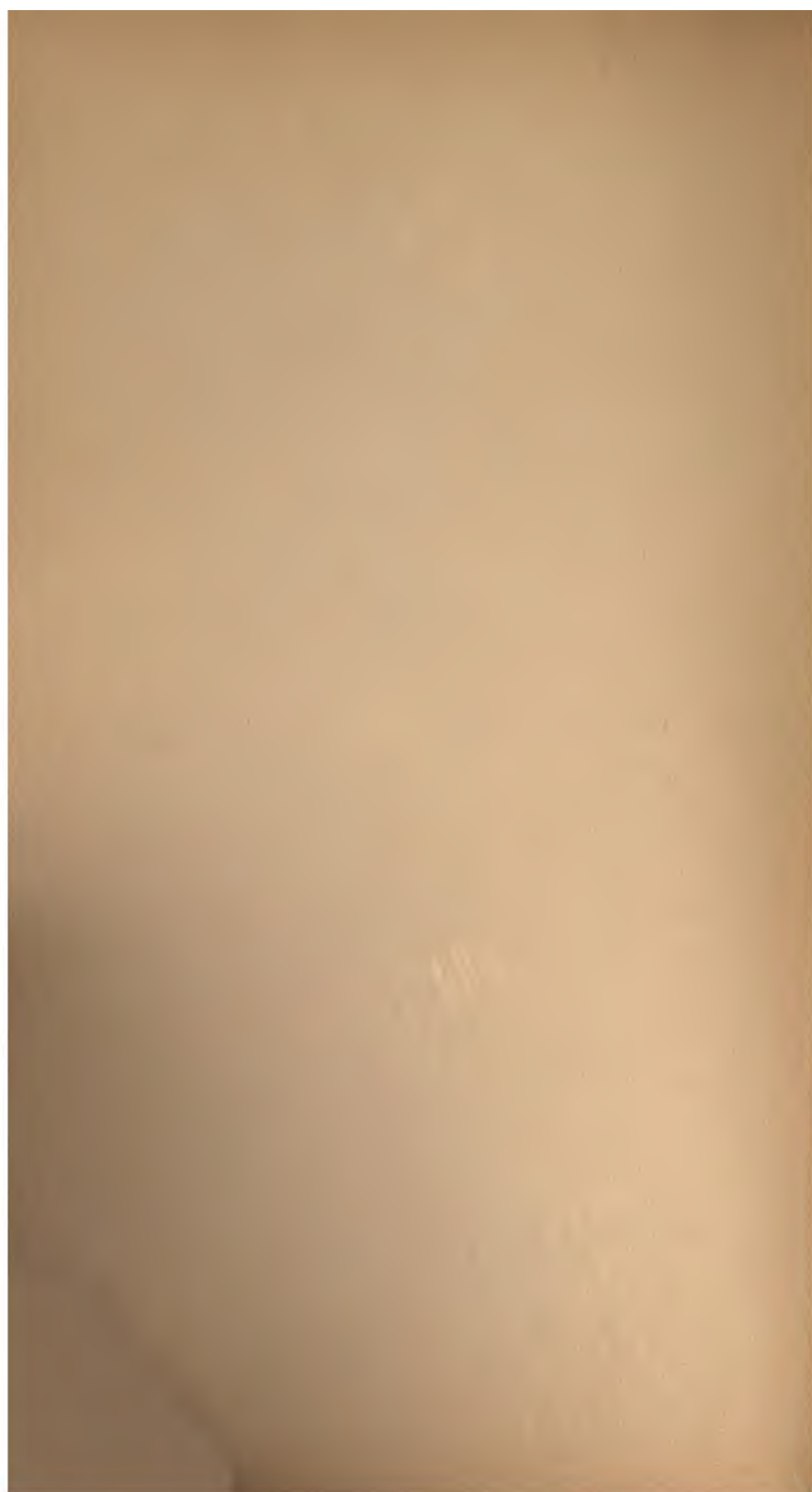


3 3433 06636675 2

VDG
Cummins







H. M. BYLLESBY & COMPANY

INCORPORATED

ENGINEERS

NEW YORK LIFE BUILDING,

CHICAGO, ILL.

DESIGN, CONSTRUCT AND OPERATE

**RAILWAY, LIGHT, POWER, HYDRAULIC
AND GAS PLANTS**

EXAMINATIONS AND REPORTS

STATE AND TERRITORIAL
GENERAL STATUTES

RELATING TO THE

USE OF STREETS AND HIGHWAYS

BY

STREET RAILWAY, GAS, WATER AND
ELECTRIC LIGHT COMPANIES

COMPILED BY

JAMES S. CUMMINS

GENERAL COUNSEL FOR H. M. BYLLESBY & COMPANY,
ENGINEERS, CHICAGO, ILL.

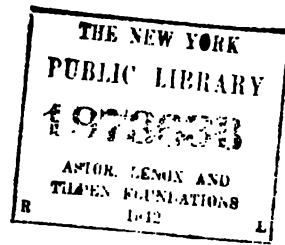
CHICAGO, ILL.

PUBLISHED BY

H. M. BYLLESBY & COMPANY

1905

H.M.



PREFACE

During a practice of fifteen years in connection with the incorporation of public service corporations and the passing upon their franchise rights, I have frequently felt the want of some ready reference book giving the general laws of the various states and territories, primarily governing the subject of franchise rights.

To my knowledge, there is at the present time no such work which has been brought up to recent date. I have frequently found that much preliminary expense, subsequently found to be wasted, has been incurred through an ignorance on the part of the business interests on the subject of the fundamental laws governing the issuance of franchises, whereas a preliminary reference to such laws would have shown at once that the franchises in question were invalid or doubtful; and for the purpose of supplying such a compendium, and which was originally intended for the use of my clients, I have decided to print in a concise form the general laws on this subject throughout the United States.

It is my intention to follow this book by a subsequent treatise covering the principal decisions in the franchise litigations which have arisen in recent years, and to discuss their bearing on the general subject.

JAMES S. CUMMINS.

Chicago, Ill., January 3, 1905.

INDEX

ALABAMA	9	NEBRASKA	109
ARIZONA	14	NEVADA	117
ARKANSAS	16	NEW HAMPSHIRE.....	119
CALIFORNIA	19	NEW JERSEY.....	121
COLORADO	23	NEW MEXICO.....	138
CONNECTICUT	26	NEW YORK.....	139
DELAWARE	29	NORTH CAROLINA.....	166
FLORIDA	32	NORTH DAKOTA.....	168
GEORGIA	35	OHIO	172
IDAHO	38	OKLAHOMA TERRITORY...	186
ILLINOIS	40	OREGON	189
INDIANA	46	PENNSYLVANIA	193
INDIAN TERRITORY.....	51	RHODE ISLAND.....	208
IOWA	52	SOUTH CAROLINA.....	211
KANSAS	60	SOUTH DAKOTA.....	214
KENTUCKY	67	TENNESSEE	218
LOUISIANA	71	TEXAS	223
MAINE	75	UTAH	226
MARYLAND	80	VERMONT	230
MASSACHUSETTS	82	VIRGINIA	234
MICHIGAN	89	WASHINGTON	241
MINNESOTA	92	WEST VIRGINIA.....	250
MISSISSIPPI	97	WISCONSIN	253
MISSOURI	99	WYOMING	261
MONTANA	106		

STATE AND TERRITORIAL STATUTES
RELATING TO THE
USE OF STREETS AND HIGHWAYS

BY

**STREET RAILWAY, GAS, WATER, AND ELECTRIC
LIGHT COMPANIES**

ALABAMA.

CONSTITUTION.

Article 1, Section 23. **Irrevocable grants, etc.**—Legislature shall not pass any law making any irrevocable grants of special privileges or immunities.

Article 4, Section 23. **No special or local law** shall be enacted for the benefit of individuals or corporations in cases which are or can be provided for by general law or where the relief sought can be given by any court of this State, nor shall the operation of any general law be suspended by the General Assembly for the benefit of any individual or association.

Section 50. The General Assembly shall have no power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State.

Article 14, Section 1. Corporations may be formed by general laws, but shall not be created by special act, except for municipal manufacturing, mining, industrial or educational purposes or for contracting or improving navigable rivers and harbors.

Section 2. All existing charters or grants of special or exclusive privileges under which the bona fide organization shall not have taken place and business commenced in good

faith at the time of the ratification of this Constitution shall therefore have no validity.

Section 24. No street passenger railway shall be constructed within the limits of any city without the consent of local authorities.

CORPORATIONS.

Act of 1903, Chapter 310, Section 1. Three or more persons may associate together and become a body incorporate.

Section 1, "H." If the corporation is a railroad or a railway, canal, navigation or other transportation company, unless it is proposed to do business in only one town or city, the certificate of incorporation shall among other things state the terminals and such other points along the lines of such corporation as the incorporators may deem proper, and if a navigation company the certificate shall, among other things, contain the names of the streams, seas or other bodies of water within the jurisdiction of this State in which it is proposed to navigate.

Section 1, "I." If a corporation is formed for the purpose of constructing, operating or maintaining or purchasing any plant or other works for internal improvements or public utility other than those in next above subdivision, the certificate of incorporation shall state the names of the counties, states, towns and other municipal subdivisions in which it is proposed to do business, together with the streets and all public places or in or near or between which it is proposed to construct or operate such works for internal improvement or public utility. If the business is for supplying water, the certificate shall state the stream or streams or other source from which it will derive its water supply.

Section 8. **Street railways, gas and electric companies, right of eminent domain.**—Corporations formed for the purpose of constructing, operating or maintaining railroads, street railroads, gas or electric works, water works, water power companies or any work of internal improvement or public utility, may exercise the right of eminent domain in the manner provided by law, but they shall not be authorized to use the streets, avenues, alleys or other public places of any city, town or village for the operation thereof, without first obtain-

J. G. V. N.

ing the consent of the proper authorities of said town or village. Street railways, water, gas or electric companies, etc., may acquire by condemnation for a way or right of way not exceeding 100 feet in width throughout the entire length of its railroad lines, etc.

No street railway, gas, electric or water company shall, without consent of the owner of the land, construct its line through any yard, curtilage, dwelling house, stable lot or barn. Water companies may also acquire by condemnation riparian rights and the rights to take water from any stream or other body of water for their water supply, together with other lands adjacent thereto to protect or preserve the purity of the water.

Section 9. **Street railways** may cause such examination and surveys of their proposed railroads and lines necessary for the selection of the most advantageous routes, and for that purpose may, by their officers and agents, enter upon lands and water of any person, subject, however, to all liability for damages done thereto.

Section 15. **Street railways, gas, electric and water companies** and all other corporations except railroads formed for the purpose of constructing and operating a public utility in any city, town or village, may contract with the authorities of such county, city, town or village in reference to the use of the streets, public roads and other public places therein. The manner of constructing and operating their lines or works, the public service they are to render and the compensation they are to receive for the carrying of property and persons, and the furnishing of water, gas, electric light, and power, which contracts may be altered by mutual consent, but nothing herein shall prevent any city or town from regulating from time to time the use of the streets and public places or requiring a change in the construction of the lines.

Section 39. Any two or more corporations which are authorized to consolidate under this act may merge or consolidate into a single corporation, which may be either one of the consolidated companies or new company, provided two-thirds of the stockholders of each corporation consent thereto.

Section 51. Whenever a public utility company having enjoyed franchises under a contract with any city, town or other municipality refuse to render any public or quasi pub-

lie service to such city or other sub-division or the inhabitants thereof and shall fail after reasonable notice of such default in the performance of such contract to comply with and perform same in a manner provided in such contract, the governing body of such city, town or other sub-division may by bill or petition apply to the court of the county in which such city, town or other sub-division is situate to enforce the forfeiture of the rights of the franchise and annul the charter of the corporation. If the court finds such failure it shall enter a decree ordering such corporation within a time to be named in said decree to comply with its contract in the respect wherein it is in default. If the decree has been complied with the proceeding shall be dismissed upon the payment of all costs by the corporation. If it has not been complied with, the court shall declare the franchise forfeited and dissolve the corporation.

Act of February 26, 1903, page 67. **Railways may extend lines and furnish light.**—Every corporation owning and operating a street or suburban railway in any foreign State contiguous to this State and which is engaged in such foreign State in furnishing and supplying electricity for light, heat or power or either of them and who shall extend the tracks of said corporation into the State under the laws of this State may, upon consent of the municipalities thereof first obtained, extend its electric lines or conductors into any incorporated town, city or village and operate same therein for the purpose of furnishing light, heat and power and to that end occupy the streets and public ways with suitable poles, conduits, wires and attachments under such restrictions as may be agreed upon between the company and the respective municipalities. The said corporation shall have the right to extend its wires along the lines on its railway and the territory contiguous thereto for the purpose of delivering to such persons as it may contract with electricity for the purpose of lighting, heat or power or either of them.

Act of March 4, 1901. **Electric light and power companies** have the right of way along and across railways or public highways for their lines and wires and shall have the easement for its poles and wires over other lands, franchises and easements of other persons and corporations upon making com-

pensation therefor as provided by law, but they shall not construct their poles, lines or railway on the right of way, railway, public highway or over other telegraph or telephone companies, except when it may be necessary to cross said right of way, and in no case shall such poles, lines or railways be so constructed as to hinder travel, endanger life or damage property of said railroad or other telegraph, electric or telephone companies or in any way interfere with the proper operation of same.

CITIES AND TOWNS.

Act of October 6, 1903, page 402. Any city or town of the State may hereafter contract or purchase a water works plant, gas plant, or other light or power plant or extend or enlarge the same and may, by its board of mayor and aldermen or other governing body, execute a mortgage on the plant purchased or constructed to secure the indebtedness and interest on such bonds and indebtedness created by reason of the purchase, construction, extension and enlargement of such plant or plants.

Act of October 1, 1903 page 365. **Water and power companies.**—Sections 1, 2, 3, 4 provide that water and power companies, both foreign and domestic, may condemn lands and flood public and private ferries and public and private roads.

Section 5. **Water companies** may condemn lands not exceeding the width of fifty feet upon which to erect poles and wires, for the manufacture and sale of power produced by water as a motive force, provided such corporations shall have no rights without consent, to construct and operate pole and wire lines upon the right of way of any stream or any electric railroad, telegraph or telephone company, except to cross same, and provided such corporation shall have no right without consent, to construct and operate pole and wire lines upon the right of way of another corporation having the power to manufacture, supply and sell power produced by water as a motive force, except to cross the same.

Section 6. **Water companies** shall have the right and authority to erect and operate pole and wire lines across, along and in public roads, subject to the approval of the Board of

County Commissioners or Board of Revenue in the counties in which such roads are located.

The acts do not place any limit of time for the duration of a franchise.

The case of *Birmingham & Pratts Mines St. Ry. Co. vs. Birmingham St. Ry. Co.*, 79 Ala., p. 465, holds that a charter of a street railway company and the public statutes which grant the power to a street railway to use the streets under a franchise exclusively and perpetually would be in violation of Article 1, Section 23, of the Constitution, which does not allow laws making irrevocable grants of special privileges or immunities.

If, therefore, perpetuities are against the policy of the law of this State, the question arises, if a time limit is not fixed in the ordinance, will the ordinance be good for the life of the corporation, or is it a mere license, revokable at any time by the municipality? It seems, under the doctrine in the above case, it would be the latter.

Outside of the statutes of this State above referred to, there are no express powers in municipal corporations organized under the general laws of this State to grant franchises for the use of streets by street railways, gas, water and electric companies, but such municipalities seem to have implied power to do so. Many of the cities and towns in the State have been incorporated under special laws, so the charters of those cities and towns must be looked to for anything specially covering their rights to grant franchises to public utility companies.

ARIZONA.

CITIES AND TOWNS.

Section 459, Revised Statutes. The Board of Trustees shall have power to provide for lighting the streets and the public buildings of the corporation.

POWERS OF CITIES.

Section 485, Revised Statutes. City Councils have the following powers:

To lay out, establish, open, widen, extend, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds and vacate the same.

To provide for lighting the same.

To regulate the opening thereof for the laying of gas and water pipes and mains, and also the erection of poles and wires and laying of street car tracks and the operation of street railways in and upon its streets, alleys, public grounds and places, provided, however, that any company organized for the purpose of manufacturing gas to supply cities or the inhabitants thereof with same, or of supplying water, shall have the right by consent of the common council (subject to existing rights) to erect and establish gas factories, water works and sewer plants and lay down pipes in the streets, alleys, plazas and ways of any city in the territory.

Article 1. Cities having an assessed valuation of \$3,000,000 or over. Powers of.

Section 614, Revised Statutes. They have power to construct and maintain water works, electric light and power works.

They have power to lay out open streets and regulate the use thereof.

Section 617. No franchise or right to use the streets shall be granted for a longer term than twenty-five years, and in addition to any other form of compensation the grantee shall pay annually a sum of money, based in amount upon its gross receipts, to the city. Such grant and contract in pursuance thereof may provide that upon the termination of the grant the plant as well as the property, if any, of the grantee in the streets, avenues and other public places shall thereupon, without further or other compensation to the grantee or upon payment of a fair valuation thereof, be and become the property of the city, but the grantee shall be entitled to no payment because of any valuation derived from the franchise. Every grant shall specify the mode of determining any valuation therein provided for and shall make adequate provision, by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

The city may own and operate and may regulate or prohibit the construction of railroad or other means of transit or transportation and methods for the production of transmission of heat, cold air, light and electricity or other power in any of their forms by pipes, wires or other means.

Section 545, Article 111. Councilmen to provide for lighting the streets, and other public places in the town, to exclusively regulate and control the laying and repairing of gas pipes and other appurtenances therein.

Act of March 19, 1903. No franchise for any public utility shall be granted to any person, persons, company, corporation or association by any municipal corporation or the authorities thereof in the Territory of Arizona to be maintained or operated by any private person, persons, company, corporation or association or any municipal corporation in the Territory unless authorized to be granted by a majority vote of the qualified voters of such municipal corporation at a regular election held in such municipal corporation.

No franchise shall be granted for a longer term than twenty-five years.

ARKANSAS.

CONSTITUTION.

Article 2, Section 18. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities, which upon the same terms shall not equally belong to all citizens.

Section 19. **Perpetuities and monopolies** are contrary to the genius of the republic and shall not be allowed.

Article 5, Section 24. **No local or special law** shall be passed where the general law can be made applicable.

Article 12, Section 2. The General Assembly shall pass no special act conferring corporate powers except for charitable, educational and reformatory purposes.

Section 3. The General Assembly shall provide by general laws for the organization of cities and towns and restrict their

powers of taxation, assessment, operating and contracting debts.

Section 6. **Corporations** may be formed under general laws, which laws may from time to time be altered or repealed and may revoke charters when they are injurious to the citizens of the State.

CITIES AND TOWNS.

Municipal corporations are divided into two classes; those having a population exceeding five thousand inhabitants are cities of the first class, and those having a population between 2,500 and 5,000 are cities of the second class.

GENERAL POWERS.

Sandall's and Hill's Statutes, Sections 5135-5136-5141. Cities and towns have power to provide for the water supply by the construction of pumps, cisterns, reservoirs or water works and may go beyond their territorial limits for that purpose. They shall have power to provide for lighting streets and alleys by gas or otherwise and authorize the construction of street railways.

Section 5137. **Franchises.**—And for the purpose of providing for water, light and street railway, the mayor and council may contract with any person or corporation to construct and operate the same and may grant to such person or corporation for the time which may be agreed upon, the exclusive privilege for using the streets and alleys of such city or town for such purpose or purposes.

Section 5208. **Control of streets.**—The city council of the city of the first and second class shall have the care, supervision and control of all the public highways, bridges, streets, alleys and public squares and commons within the city and shall cause the same to be kept open and in repair and free from nuisances.

Act of 1901, page 341. **Municipal works.**—Municipal corporations shall have power to provide for and construct and acquire works for lighting the streets, alleys, parks and public places by gas, electricity or otherwise and in connection therewith furnish light and power to private consumers upon just compensation therefor; and have the right to authorize the construction of gas or electric works and of street railways.

Act 1901, page 381. **Franchises** heretofore issued to any person or corporations by the municipal authorities of any city or town authorizing the construction of electric light systems be and the same are hereby legalized with the same force and effect as if the law now in force granting franchises mentioned electricity.

Act of April 8, 1901, page 155. **Interurban railways.**—Any number of persons, not less than three, may organize into a private corporation for constructing, acquiring, maintaining and operating interurban electric railroads, connecting cities, towns and villages and into, over and through streets of cities, towns and villages reached by said electric roads. Such corporation shall have the right to survey its lines, lay out its road, acquire right of way not exceeding 200 feet in width when necessary and shall have power to enter upon, condemn and appropriate lands, rights of way and easements in property of persons or corporations.

They may lease or purchase any street or suburban railway constructed and held by any other corporation or any individual in any city, town or village reached by the lines of said interurban road; and the owner of such street railway has the corresponding power to sell, lease or convey its, their or his property.

Act of April 21, 1903, page 275. **Lighting rates.**—The city council of a city or town are authorized when complaint is filed by one or more citizens of such city or town that any water company, gas or electric plant or other persons managing same is charging an exorbitant rate for water, gas and electricity, summon all such persons furnishing such water, gas or electricity with their books and may make such examination thereof as may be necessary to determine whether or not the price charged for same is reasonable. If, upon examination, the council determine that the citizens or any number of citizens of said city or town is being charged an unreasonable price, it shall be their duty to fix such price, as they may deem to be a reasonable charge.

Any person, company or corporation operating such water, gas or electric plant refusing to accept the rate as fixed by council and shall charge, demand and receive a greater amount than that fixed by council, they shall be guilty of a

misdemeanor and on conviction be fined not less than \$25.00 or more than \$500.00.

As the constitution declares that perpetuities and monopolies are contrary to the genius of a republic and shall not exist, and also provides that the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens, it is clear that a franchise can not be granted giving an exclusive right to use the public streets or without a limitation of time therein.

CALIFORNIA.

CONSTITUTION.

Section 21, Article 1. No special privileges or immunities shall ever be granted which cannot be altered, revoked or repealed by the Legislature, nor shall any citizen or class of citizens be granted privileges or immunities which, upon the same terms, shall not be granted to all subjects.

Section 25, Article 4. The Legislature cannot grant to any corporation, association or individual any special or exclusive right, privilege or immunity.

Section 33, Article 4. The Legislature shall pass laws for the regulation and limitations of charges for services performed and commodities furnished by telegraph and gas corporations, etc.

Section 11, Article 11. Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Section 19, Article 11. In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual or company duly incorporated for such purpose, under and by authority of the laws of this State, shall, under the directions of the superintendents of streets or other officers in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnities for damages, have the privileges of using the public streets and thor-

oughfares thereof and of laying down pipes and conduits therein and connections therewith so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas light or other illuminating light or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges therefor.

Note.—The courts have held the word “city” means and includes towns (129 Cal. 397; 62 Pacific 61; 62 Cal. 209; 119 Cal. 30).

Section 10, Article 12. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise so as to relieve the franchise or property held thereunder from the liability of the lessor or grantor, lessee or grantee contracted or incurred in the operation, use or enjoyment of such franchise or any of its privileges.

Note.—See 116 Cal. 97; 47 Pacific 932.

Section 1, Article 14. The use of all water now appropriated or that may be hereafter appropriated for sale, rental or distribution is hereby declared to be a public use and subject to the regulation and control of the State, provided that the rates or compensation to be collected by any person, company or corporation in this State for the use of water supplied to any city and county or city or town or the inhabitants thereof shall be fixed annually by the Board of Supervisors for city and county or city or town, council or other governing body, etc., by ordinance or otherwise, in the manner the other ordinances or legislative acts or resolutions are passed and shall continue in force for one year and no longer. Such ordinance shall be passed in the month of February of each year and take effect on the first day of July thereafter

Note.—See 62 Cal. 209; 74 Cal. 571; 82 Cal. 286; 24 Supreme Court Report 586; 116 Cal. 97; 47 Pacific 932.

Section 9, Article 20. No perpetuity shall be allowed except for eleemosynary purposes.

FRANCHISES.

Act of 1903, page 90, Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street railroads upon any public street or highway,

to lay gas pipes for the purposes of carrying gas for heat and power, to erect poles and wires for transmitting electric heat and power, along or upon any public street or highway or to exercise any other privilege whatever, hereafter proposed to be granted by Boards of Supervisors, Boards of Trustees, Common Council or other governing or legislative bodies of any city and county, city or town within the State, except steam railroads, telegraph or telephone lines, are acquired as follows:

Section 2. Application therefor must be made to the proper authorities and by them advertised that bids would be received for such franchise and that it would be awarded to the highest bidder.

Section 3. The publication must state the character of the franchise, the term for which it is granted and that the successful bidder must, during the life of said franchise, pay to the municipality 2% of the gross annual receipts. However, no percentage shall be paid for the first five years succeeding the date of the franchise, but thereafter such percentage shall be paid annually and for any default of the payment thereof, the franchise may be forfeited and it is further provided that if the franchise be a renewal of a right already in existence, the payment of the said percentage shall begin at once.

Section 4. In case the franchise granted shall be an extension of an existing system of street railroad, then the gross receipts shall be estimated to be one-half of the proportion of the total gross receipts of said system which the mileage of such extensions bears to the total mileage of the whole system and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

Section 5. The franchise shall be awarded to the highest bidder.

Section 6. Work shall be begun within not more than five months from the granting of the franchise, and if not commenced within that time, said franchise shall be declared forfeited and shall be completed within not more than three years thereafter, and if not completed within such time, said franchise shall be forfeited.

Section 7. The authorities shall require a bond to be filed for the faithful performance of the contract.

Act, February 25, 1905. This Act ratifies all ordinances theretofore granted to street railways to propel cars by electricity.

Civil Code, Section 497. **Street railway franchises shall not exceed fifty years.**

Act, February 24, 1893. Civil Code, Section 773. A franchise for a street railway or an extension thereof cannot be granted within ninety days preceding a general election or within seventy days next following the general election.

Street railways are authorized and required to carry mail carriers without fare while in discharge of their duties.

Political Code, page 1023. Section 440. A city or town cannot grant a franchise for water or gas for a term exceeding twenty-five years.

Political Code, Article 3. Section 764. A municipality having a population of not more than 10,000, has the power to construct water works, electric and other plants for supplying the city with water and electric or other lights and the right to purchase, lease or construct water works, electric plants, gas plants and to supply said city with and to sell to the inhabitants thereof, water, light, heat and power provided the question of acquiring such property is submitted to the voters, and a majority of the voters favor same.

Cities of over 100,000 inhabitants have the right to provide for lighting the streets, but no contract for lighting streets or public buildings shall ever be made for more than one year nor shall any contract be made to pay more for gas or other illuminating material than is legally charged to ordinary consumers or than the usual rates charged under like conditions.

Without reason there seems to be some distinctions shown by the several acts as they do not empower all of the cities and towns the same rights to acquire or construct such plants or to contract for light and water.

The constitution and statutes indicate that perpetual and exclusive franchises cannot be granted.

The use of streets for water, gas or street railway purposes cannot be made so as to alienate or impair the power of the city to grade, sewer, pave, macadamize or otherwise make, alter or repair the streets or highways.

The Act of 1901 as to water, electric light and gas companies

is in violation of Section 19 of Article 11 of the constitution, which grants the privilege to such companies to use the streets in cities and towns without the consent of the authorities thereof.

In any city where there are no public works owned and controlled by the municipality, electric light, gas and water companies are not required to get the consent of municipalities and such company is only required to construct and operate subject to the direction of the superintendent of streets or other officer in control thereof and under such regulations as the municipality may prescribe. *Pereria v. Wallace*, 129 Cal., 379; *In re Johnson*, 137 Cal., 115; *People v. Stephens*, 62 Cal., 209; *Mutual Electric Co. v. Ashworth*, 118 Cal., 1.

It would seem under this constitutional provision that the life of a franchise of electric, gas and water company would be for its life as a corporation.

COLORADO.

CONSTITUTION.

Article 5, Section 25, Paragraph 22. Special laws cannot be passed granting to any corporation or individual the right to lay down railroad tracks.

Ibid, paragraph 23. There shall be no grant to any corporation, association or individual of any special or exclusive privilege, immunity or franchise whatever.

Article 15, Section 11. No street railway shall be constructed within any city, town or incorporated village without the consent of the local authorities having control of the streets or highways proposed to be occupied by such street railway.

Article 16, Section 8. The General Assembly shall provide by law that the Board of County Commissioners in their respective counties shall have power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.

Mills Statutes, 1896, page 674, Section 591. **Any telegraph, telephone or electric light company** chartered by this or any other state shall have the right to construct, maintain and operate lines of telegraph, telephone or electric light wires along any railroad or other public highway in the state, but such line shall be constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.

Section 592. **Electric light companies** may contract with any person or corporation, owners of lands, for any franchise or easement therein over which the electric light wire is proposed to be erected, for right-of-way.

Section 593. **Electric light companies** shall be entitled to right-of-way over the land, privileges and easements of other persons and corporations, and the right to erect poles, etc., upon making just compensation therefor as provided by law.

Section 594. **Electric light companies** have the right of eminent domain as is provided in other cases in the statutes.

Section 595. Nothing in the Act shall be construed to authorize any person or company to erect any poles, etc., or to extend any wires along, through or upon or over any streets or alleys of any city or incorporated town without having first obtained the consent of the municipal authorities having power to give such consent.

Act of July 15, 1901. **Electric light, water and gas companies** may construct lines with the consent of the authorities of cities and towns, etc., but must pay therefor not less than one-half of one per cent of the gross earnings to the County and Municipal authorities through which its lines, ditches, flumes and pipe lines for water power run in proportion to the mileage in each such County or Municipality.

CORPORATIONS.

Mills Statute, 1890, page 614, Section 473. Except when specially provided, the corporate existence of companies is twenty years.

Section 476. A corporation may own, possess and enjoy so much real estate as is necessary for its business and may from time to time sell and dispose of same or any part thereof which is not required for the use of the corporation. They may bor-

row money and pledge their property, real and personal, to secure the payment thereof.

Section 505. **A street railway company** cannot construct its lines above, below or on any highway without the consent of the municipality.

Mills Statutes, 1890, page 2290, Section 4403. The City Council or Board of Trustees shall have no power to grant the use of or the right to lay down any railway track in any street of the city or town to any steam or horse railroad company except upon the written consent of the owners of land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes.

Mills Statutes, page 675, Section 596. **Gas and water companies** have the right to use streets and highways in cities, towns and municipalities with the consent of the authorities therein.

Section 597. **Gas companies** may lease, purchase, hold and convey coal lands.

Section 598. The term of the existence of this class of companies is thirty years.

POWERS OF CITIES AND TOWNS.

Mills Statutes, 2294, Article 67. Cities have power to erect water works or to authorize the erection of same by others, but only on authority of the majority of the voters of the city or town.

Article 68. Cities have the right to construct or authorize the construction of water works outside of the city and its jurisdiction shall extend over the territory occupied by such works, including all reservoirs, streams, trenches, pipes, etc., used and necessary for five miles above the point where the water is taken.

Article 69. When the right to build or operate such water works or gas works is granted to private persons or corporations, etc., the grant shall not be for a longer period than twenty-five years.

It will be seen from the above that in cities and towns organized under general laws, the power of the local authorities to authorize the erection of water works or gas works is subject to the ratification by popular vote at an election held for the

purpose of voting on the question; nor can they grant the use of the streets to any railway company to operate its cars without the written consent of the owners of land representing more than one-half of the frontage of the streets sought to be used.

CONNECTICUT.

CONSTITUTION.

The Constitution provides that all men when they form a social compact are equal in rights and that no man or set of men are entitled to exclusive public emoluments or privileges from the community.

This provision was construed in the case of *Norwich Gas Light Company vs. Norwich City Gas Company*, 25 Connecticut, page 19, and this case should be compared with the case of *Citizens Water Company vs. Bridgeport Hydraulic Company*, 55 Connecticut, page 1.

Under the law, it appears that a municipality in Connecticut has no power, unless specially granted, to make an exclusive grant on a highway. The Legislature may grant a municipality the power to make such grant and when the municipality exercises such granted power, the contract is beyond the reach of the Legislature unless the Legislature reserves the right to at any time change and modify the power granted.

Act of 1893, General Statutes, 1902, page 969, Section 3916. **Sale of electricity.**—No person or corporation, unless acting under authority from the General Assembly, shall in any city or town of the state whose population exceeds 15,000, manufacture for sale any electricity for purposes of light or power, but this section shall not prevent such manufacture for the purposes of business or the use of the manufactures or for the sale thereof to the tenants in the same premises where it is manufactured.

Act of 1888, General Statutes, 1902, page 966, Section 3904. **No telephone, telegraph or electric light company** shall occupy any highway or public ground without the consent of the owners of the adjoining properties, or in case such consent cannot

be obtained, without the consent in writing of the County Commissioners.

Section 3905. Control over poles and wires.—The Selectmen of any town or Common Council of any city and the Warden or Burgesses of any Borough shall, subject to the provisions of Section 3904, within their respective jurisdictions, have full direction and control over the placing, erection and maintenance of any such wires and they may make all orders necessary which shall be in writing and recorded; all of which shall be subject to the right of appeal by such companies to a judge of the Superior Court who shall determine the matter in question.

Section 3906. Any judge of the Superior Court may make any proper order with reference to the erection, placing or maintaining of any such wires as he may see fit.

Section 3909. Cutting of wires.—Any electric wire may be cut, after notice, when it is necessary for the transportation of any object on the highway.

Section 3910. No electric light and power company organized under any former joint-stock law shall use or occupy any highway, street or alley or be entitled to the powers or privileges enumerated in the chapter of which this section is a part without special authority from the Legislature.

CITIES AND TOWNS.

Act of 1893, General Statutes, Section 3993. Any city, town or borough may construct, purchase, lease or establish plants for the manufacture of gas or electricity for furnishing light for municipal purposes and for the use of its inhabitants.

Section 1939. No authority is conferred on a city to construct, purchase, lease or establish plants for the manufacture of gas or electricity except upon two-thirds of the vote of Council and approved by the Mayor and ratified by a majority of the voters.

Section 1980. No authority is conferred upon a town or borough to construct, purchase, lease or establish plants for the manufacture of gas or electricity except upon two-thirds vote at each of the town or borough meetings.

Section 1984. Cities may distribute gas or electricity for the use of its inhabitants.

Section 1987. The price to be charged for gas or electricity shall be fixed by the city and not changed oftener than once in three months.

Section 1989. If a corporation is doing an electric light or gas business in a town, city or borough at the time the town, city or borough votes in favor of constructing, purchasing, leasing or establishing plants for electric light or gas, and the corporation doing such business desires to sell its plant, the city must purchase it at a price to be determined in the manner set out in the said Statute.

Section 1981. If the city erects or purchases a plant, it may be paid for by issues of bonds payable in 30 years.

STREET RAILWAYS.

General Statutes, Section 3823. Whenever a street railway company has been chartered by General Assembly for street railway purposes and has been organized for such purpose, it shall cause a plan to be made showing the highway or highways in and through which it proposes to lay its tracks, which plan shall be presented to the Mayor and Common Council, the Selectmen of each town or the Warden and Burgesses of each borough through which it proposes to operate and no company shall construct such railway or lay additional tracks except in accordance with the plan approved by the authorities aforesaid or on appeal therefrom, approved by the Railroad Commissioners or the Superior Court.

Section 3824. The Selectmen of a town or Common Council of a city and the Warden and Burgesses of each borough shall have, subject to the right of appeal, exclusive control over the placing or locating of the tracks, wires, conductors, etc., of any railway in the highways.

Section 3835. Railways incorporated since January 1, 1893, that have not or shall not have constructed its railway in such highway on or before the close of the second regular session of the General Assembly after that at which such authority was or shall be granted, all right of such company to lay its track in such highway shall thereupon cease.

Section 3840. Railways may transport merchandise, but in the transportation of property other than small packages such as are carried by passengers, they shall be subject, at all times,

to such regulations as may be necessary therefor, which may be subscribed by the Superior Court or any judge thereof.

Section 3848. Every street railway company may borrow money and issue its bonds therefor. Before being issued, such bonds shall be registered in the office of the Comptroller. Bonds shall not be issued at any one time to a greater amount than 75% of the actual cost of the construction and equipment of the railway and such bonds may be secured by a mortgage upon all the property of the company.

Section 3853. A street railway company may, upon authority from the Superior Court, run its cars over the tracks of any other company for a distance not exceeding one-half mile.

INCORPORATION OF UTILITY COMPANIES.

Public utility companies are generally incorporated by a special act and most, if not all, of the street railway, gas, electric and water companies are incorporated under special charters and have special privileges for the use of the highways, etc., excepting, however, that they may be subject to the general laws of the state fixing their rights and how they are obtained. The only general laws we find are those herein enumerated.

CITIES AND TOWNS.

Cities and towns are incorporated under special acts. Hence, to ascertain their powers as to furnishing water, gas and electric light or to contract with others to furnish the same, we must resort to their charters.

The policy of the law seems to be that exclusive franchises cannot be granted, but the Legislative power, however, is so complete as to create an exclusive grant by refusing to grant competing franchises.

DELAWARE.

CONSTITUTION.

Since the adoption of the constitution of 1897, corporations can be created, amended, renewed or revived only by general law except municipal corporations, banks or corporations for

charitable, penal, reformatory or educational purposes sustained in whole or in part by the state.

The duration of a corporation may be perpetual but its life may be limited by a definite time fixed in its charter.

ELECTRIC LIGHT COMPANIES.

Act of 1903, page 804, Section 101. Electric companies have full power to use the public roads, highways, streets, avenues and alleys provided consent is obtained from the Council, Town Commissioners or other persons having control over such streets and highways.

Section 102. They may lay pipes or conduits and run wires therein above or beneath the public roads, etc., provided the pipes are laid at least two feet below the surface and not laid nearer than three feet to any gas or water main and such use shall be subject to such regulation, taxation and restraint as may first be imposed by the authorities.

WATER AND GAS COMPANIES.

Section 104. For the purpose of distributing gas or for the supplying of water, a water or gas company or both shall have authority to lay down pipes, mains and conduits beneath the public roads, highways, streets, avenues and alleys of any county, city, incorporated town or district, provided that said pipes are laid at least three feet under ground and that the consent of the Council or other persons having control over the highways, roads and alleys shall first and, as a condition precedent, be obtained by an ordinance of Council adopted or by a resolution passed by proper authorities at a meeting to be held not less than thirty days after notice thereof posted in five of the most public places and such company may take lands, easements and rights-of-way for locating its plant and laying down its pipes.

STREET RAILWAYS.

Under the powers conferred upon cities and towns by the constitution and Legislature of the state, the cities and towns have the right to grant to street railways the right to use the highways, to lay their tracks and operate their roads. Heretofore all street railways in the state of Delaware were oper-

ated under a special charter from the Legislature and it seems to be the rule now to incorporate street railway companies by a charter specially granted by the Legislature so that we are required to look at the special charters of the respective railways to ascertain just what rights and powers they have.

Cities and towns in this state are organized under special charters and hence we must look to those charters as to their rights and powers for constructing, owning and maintaining either electric, gas or water plants or to contract with others for furnishing to the city water, electric light or gas.

Exclusive rights seem to be obnoxious in this state and have not been tolerated except in isolated cases.

PERPETUITIES.

As the Constitution and the Legislature recognize the perpetual existence of a corporation, the question has never arisen in the courts whether or not a right granted under an ordinance from the city or town without a time limit is a perpetuity or a mere license. In other words, has the City Council the power to grant an electric light company perpetual rights to occupy the streets and highways? The statutory provisions applicable to such companies seem to place no limit upon such right. Therefore, it might be presumed that the Legislature intended to give Council the power to grant such rights. It is a mooted question throughout the country and particularly in the West, whether or not a legislative act, such as the ones above referred to, in this state is broad enough to give such power to the Council upon the theory that Council have no implied powers to grant such rights and that the act must be clear in such cases. We will say, however, that the legislative acts in this state directly give the electric, water and gas companies the right to use the streets without any words of limitation provided the consent of Council, Town Commissioners and other authorities is obtained so that the acts would indicate that such municipal authorities might at least consent to the right for and during the life of a corporation, and if the duration of the corporation, as fixed by the charter, is perpetual, then the rights to use the public highways and public grounds could also be perpetual.

FLORIDA.

CONSTITUTION.

The authority of the Legislature to grant a perpetual and exclusive franchise is not limited by the constitution.

Municipal and public service corporations may be and are incorporated under special laws.

FRANCHISES.

The franchise or privilege of using the highways for a public purpose may be obtained either directly from the Legislature by companies incorporated by special act or from the municipality by ordinance if incorporated under the general law.

Act June 2, 1899, page 263, Section 1. No municipality shall grant any franchise or right to use any street for the purpose of operating along or across the same to any street road, water works, telephone, gas, electric or other business corporations for a term exceeding thirty years or without reserving the right to require the grantee, as a condition precedent to the taking effect of the grant, to give and grant to the municipality the right, after the expiration of such term, to purchase same. Any franchises which shall be granted for a longer time and without the conditions to purchase shall be void.

Act May 31, 1901, page 172. Electric railways outside of corporate limits shall have the same rights, powers and privileges of eminent domain as are now exercised and enjoyed by all railroads and canal companies in the state with the right to condemn and acquire such right-of-way for the construction of its lines in the same manner and by the use of the same powers as is now prescribed by the laws of the state for the condemnation by railroads.

Act June 2, 1893, page 93. For the purpose of supplying a city, town or village with water, corporations have the right to enter upon land public or private and condemn the same therefor.

Revised Statutes, Section 1562, page 526.

Whenever the use of any street, square or public way or any

part thereof within any incorporated town or city is required by any corporation for public use, the right to use such street, square or public way shall be granted by the Mayor and Board of Aldermen of such city or town.

CITIES AND TOWNS.

Act June 2, 1893, page 94. The Council of any city or town of the state is authorized and empowered to enter into an agreement with a gas, electric light or water works company for lighting the streets or constructing and operating water works in said city or town provided such agreement or agreements shall be ratified by a majority vote of the fee-holders of said city or town, and provided that a copy of the agreement, together with a notice of such election shall be published in a newspaper in such city or town for four consecutive weeks prior to the day of election to be held for the purpose of voting on said contract.

Section 2. Under the provisions of this act, no city or town in the state shall contract and agree to pay in any one year for such purposes a sum of money exceeding four mills on the assessed value of the property in said city or town.

Act June 5, 1897, page 141, Section 1. Cities or towns may construct, purchase, lease or establish and maintain within its limits one or more plants for the manufacture and distribution of gas or electricity for municipal use and for the use of such inhabitants as may require and pay for same.

Section 2. The city or town cannot exercise such rights to construct, purchase or lease an electric or gas plant until it has been consented to by a two-thirds vote of the City Council and approved by the Mayor and thereafter ratified by a majority of the voters voting thereon at an annual municipal election. When such voting has failed to ratify, no similar vote shall be submitted for ratification until after the expiration of one year thereafter.

Section 4. A city or town may issue bonds to pay for same, payable in a term not exceeding thirty years.

Section 6. A city or town may establish regulations to furnish light.

Section 8. The price to be charged for gas or electricity

shall be fixed by the city or town and not changed oftener than once in three months.

Section 9. When a city or town decides, as above, to establish a plant and any person, firm or corporation at the time of the vote, be engaged in the business of distributing gas or electricity in such city and shall elect to sell and shall comply with the provisions of this act, the city or town shall purchase said plant; the price to be its fair market value, including as an element of value the earning capacity of such plant based upon its actual earnings. If the main works do not lie within the city or town, then such city or town shall only purchase that portion of such plant which lies within the limits of the city and pay therefor upon the basis of value above established, but without allowances for damages on account of the severance of the plant.

WATER POWERS.

Act of June 4, 1903, page 141. Whenever any person or persons or corporations owning lands in this state on any water course, desires to erect a dam for furnishing power for water grist mill, electric light, power or other public utility and shall not have the fee simple title to the lands on the opposite side thereof against which his dam would abut or the surrounding land which would be overflowed thereby, may take the land by filing with the clerk of the Circuit Court his petition therefor. Upon petitioner paying into the Court within ten days after judgment, the compensation ascertained by the jury appointed to assess the damages therefor and record in the register of deeds the judgment, the petitioner shall have full power and authority to enter upon and appropriate the property.

Under the decision of the court in the case of Trust I. I. Fund v. St. R. R., 16 Florida, 531, after such corporation has secured its right and commenced operation under it, the Legislature or municipality cannot change or alter its provisions without the consent of the corporation.

In the case of Jacksonville Electric Light Co. vs. City of Jacksonville et al., rendered October 15, 1895, 12 American Railroad & Corporation Reports, page 626, the Court held that a charter conferring power upon the City Council to provide

for the lighting of the city by gas or other illuminating material or in any other manner was sufficient to authorize the erection and maintenance at public cost of an electric plant of sufficient power and capacity to light not only the streets and public places in the corporation, but also for the purpose of supplying the inhabitants of the city with electric light for use in their private residences and houses.

GEORGIA.

CONSTITUTION.

Article 3, Section 7. The General Assembly shall have no power to grant corporate powers and privileges to private corporations, but it shall be prescribed by law the manner in which such powers are to be exercised by the Court.

All corporate powers for banking, insurance, railroad, canal, navigation, express, and telegraph companies shall be granted by the Secretary of State or if he be disqualified in any case, then the Legislature shall provide by what person charter shall be granted.

The General Assembly shall not authorize the construction of any street passenger railway within the limits of any town or city without the consent of a corporate authority.

POWER OF COUNCIL IN CITY.

Code of 1895, Vol. 1, page 197. Council shall have power in cities to lay off, vacate, close, open, curb, pave and keep in good order roads, streets, alleys and side-walks and improve and light the same. They may locate, authorize or prohibit the erection of gas works and water works.

CORPORATIONS.

Code of 1895, Vol. 2, page 23. Should any charter be granted by the General Assembly to a private corporation and be silent as to its continuance, such charter shall expire at the end of thirty years from date of its grant.

Section 1864. A corporation charged with duty to the public cannot sell or otherwise dispose of its property or franchise so as to relieve itself from liability if acts done or omitted without sanction of the Legislature.

Section 1870. Act of 1894, page 114. Any person or corporations creating electricity in the State may make contracts or lease any part thereof to any person or corporation.

The existence of corporations incorporated by the Superior Court shall not exceed twenty years.

STREET RAILWAYS.

Code of 1895, page 129, Section 2180. All the provisions relating to railroads apply to street railways and interurban railways, but they cannot be constructed in any towns or cities without the consent of corporate authorities and they shall be subject to all just and reasonable rules and regulations by the corporate authorities and liable to all assessments and other lawful burdens that may be imposed upon them from time to time.

Section 2180. Electric and suburban railways may operate electric plants and furnish electric power to any town or city within the limits of the county in which the railroad is erected and also may furnish electric light to corporations, companies and citizens residing in and doing business within the limits therein and collect compensation for same.

Section 2184. Street railway companies may lease or sell their roads and franchises.

Code 1895, page 509, Section 3064. No franchises granted by the State shall be held to be exclusive unless plainly and expressly so declared in the grant.

Act July 29, 1903, page 64. Street railways are authorized to furnish steam for power and heating purposes and use the streets and public places to maintain pipes therefor upon consent of the city or town.

WATER COMPANIES.

Code of 1895, page 220, Section 2407. Water companies and individuals have power to lease, purchase, condemn land for the purpose of any water power.

Code of 1901, page 128, Section 6454. Electric companies

operating by water power may purchase, lease or condemn rights of way or easements upon land of others in order to run lines of wire, maintain dams and flow-back water upon just compensation.

All of the principal municipalities of this State have been incorporated by special legislation, so that there are no well-defined land marks in the general legislation as to cities and as to their rights to grant franchises for public utility companies. We must, therefore, look to the special acts incorporating the cities to see just what rights and powers they have as to granting the use of the streets for electric light, gas, water and street railway purposes. The cities and towns are so numerous, they are not set out, as these abstracted laws were only to cover the rights granted by municipal corporations that were incorporated under general acts in the different States.

The charters of the municipalities grant the control of the streets to the municipality and also give them ample power to allow public utility companies to use the streets, alleys and public grounds in the respective cities for public purposes.

Franchises in this State are usually granted for a definite period and the special charter to each city determines the right as to whether the city may or may not grant a perpetual franchise. It seems to be the rule, however, that under the present constitution, no perpetual franchise can be granted. Exclusive franchises have been granted in this state, but they are subject to modification or ratification, which may or may not limit the exclusive privileges.

It seems to be the established rule in this state that exclusive grants are in derogation of common rights and that such grants should be strictly construed and that nothing is to be intended beyond the express words contained therein.

IDAHO.

CONSTITUTION.

Article 3, Section 2. No special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the Legislature.

Article 3, Section 19. The Legislature cannot pass special laws creating any corporation.

Article 11, Section 2. No charter of incorporation shall be granted, extended, changed or amended by special law except municipal, charitable, educational, penal or reformatory institutions, but the Legislature shall provide by general laws for the organization of corporations hereafter chartered, provided that any such law shall be subject to future repeal or alteration by the Legislature.

Article 11, Section 11. No street or other railroad shall be constructed within any city or town or incorporated village without the consent of the local authorities having the control of the street or highways therein.

Section 14. If a railroad, telegraph, express or other corporation organized under any laws of this state consolidate with a corporation organized under the laws of another state, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of this state.

CITIES AND TOWNS.

Section 1833, Paragraph 6, page 577, Political Code. Cities have the right to provide for and regulate the lighting of the streets, public buildings and grounds and the erection of lamp posts.

Section 1916, paragraph 13, page 608. They may contract with and authorize any person, company or association to erect gas works and give such exclusive privilege for furnishing gas to light the streets for any period of time not exceeding five years.

Section 1916, paragraph 19. They may regulate the passage of railways through the streets and public grounds of the city or village.

Section 1144, Political Code, page 318. Every gas, water or railroad corporation has power to lay conductors and tracks through the public ways and squares of any city, village or town when it is established with the consent of the municipal authorities and under such regulations and for such compensation as the authorities and the law prescribes.

Section 2200, Political Code. No corporation, formed to supply any city or town with water, can do so unless previously authorized by an ordinance of the authorities thereof unless it is done in conformity with a contract with the city or town and the contract so made is valid and binding in law, but does not take away from the city or town the right to regulate the rates of water and the franchise must not be an exclusive one.

Section 2273. No corporation can lay down pipes or mains without permission from the city or town authorities.

There does not appear to be any specific legislation authorizing cities or towns to grant the use of the streets for electric light wires and if such rights are granted, they are only through implied powers in the city. The Legislature seems to have only given cities the right to authorize gas and water works and to regulate the passage of railways through the public streets and public grounds. These acts seem to be broad enough to give the municipality the power to grant rights to street railways and to gas and water companies, but for some reason the Legislature has overlooked electric light wires entirely. Hence, the occupancy of and maintenance of electric pole lines upon the highways in this state are granted under some implied power in the municipality.

Under no consideration, in the absence of a direct statutory provision can a municipality grant an exclusive right and where a right is given, it seems, under a recent decision, that an ordinance must be limited to a specified time, otherwise, it may be either a perpetuity which is against the policy of the law in this state or a mere license revokable at any time.

In the case of *Boise City Art. Hd. & Cold Water Company vs. Boise City*, 123 Federal, 232, the Court held that a right under an ordinance which had no time limit was a mere license and revocable at pleasure by the city.

ILLINOIS.

CONSTITUTION.

Article 2, Section 14. No ex post facto law or law impairing the obligations of contracts or making any irrevocable grant of special privileges or immunities shall be passed.

Article 4, Section 22. The general assembly shall not pass local or special laws granting to any corporation, association or individual the right to lay down tracks or amending existing charters for such purpose or granting to any corporation, association or individual any special or exclusive privileges, immunity or franchise whatever.

Article 11, Section 1. No corporation shall be created by special laws or its charter extended, changed or amended except those for charitable, educational, penal or reformatory purposes which are to be and remain under the patronage and control of the State; but the general assembly shall provide by general laws for the organization of all corporations hereafter to be created.

Article 11, Section 4. No laws shall be passed by the general assembly granting the right to construct and operate a street railway within any city, town or incorporated village without acquiring the consent of the local authorities having the control of the street or highways proposed to be occupied by such street railroad.

CITIES, VILLAGES AND TOWNS.

Starr & Curtiss' Statutes of Illinois, page 694, Section 63, Article 5. The city council of cities or the president of the Board of Trustees in villages have power to provide for the lighting of streets and to regulate the openings thereof for the laying of gas or water mains and pipes and the building and repairing of sewers, tunnels and drains and erecting gas lights. Provided that any company heretofore organized under the general laws of this State or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages or the inhabitants thereof with the same, shall have the right by

the consent of the common council, subject to existing rights, to erect gas factories and lay down pipes in the streets and alleys of any city or village in this state, subject to such regulations as in such city or village may by ordinance impose. They may also regulate, permit or prohibit the locating, constructing or laying a track of any horse railroad in any street, alley or public place, but such permission shall not be for a longer period than twenty years.

Starr & Curtiss' Statutes of Illinois, page 712. The city council or Board of Trustees shall have no power to grant the use of or right to lay down any railroad tracks in any street of the city to any steam, dummy, electric, cable, horse or other railroad company whether the same shall be incorporated under any general or special law of the State now or hereafter in force, except upon the petition of the owners of the lands representing more than one-half of the frontage of the street or so much thereof as is sought to be used for railroad purposes and when the street or part thereof sought to be used shall be more than one mile in extent no petition of land owners shall be valid unless the same shall be signed by the owners of the land representing more than one-half of the frontage of each mile and the fraction of a mile, if any, in excess of the whole mile, measuring from the initial point named in such petition of such street or of a part thereof sought to be used for such railroad purposes.

ELEVATED WAYS AND CONVEYORS.

Starr & Curtiss' Statutes of Illinois, page 3331. If any such corporation shall be unable to agree with the owners for the purpose of any real estate required for the purposes of its incorporation or the transaction of its business or for its depots, station buildings, engine houses or for right of way or for any other local purpose connected with or necessary to the construction, maintenance and operation of said elevated way or conveyor, such corporation may acquire such title in the manner that may be now or hereafter provided for by law of eminent domain.

Any such corporation may, by their agents and employees, enter upon and take from any land adjacent to its way, road or conveyor, earth, gravel, stone or other material, except fuel

and wood, necessary for the construction of such elevated way, paying, if the owner of such land and the said corporation cannot agree thereto, the value of said material taken and the amount of damage occasioned to any such land or its appurtenances; and if such owner and corporation cannot agree thereon, the value of such material and the damage occasioned to such real estate shall be ascertained, determined and paid in the manner that may now or hereafter be provided by any law of eminent domain, but the value of such material and the damage to such real estate shall be ascertained, determined and paid for before such corporation can enter upon and take the same. Such corporation may cause such examination and survey for its proposed right of way to be made as may be necessary for the selection of the most advantageous route and for this purpose by its officers, agents and servants may enter upon the lands or waters of any person or corporation, but subject to the responsibility for all damages that shall be occasioned thereby. They have the power to lay out a strip of land not exceeding fifty feet in width in which to construct, maintain and operate said elevated way and conveyor and for the purpose of cutting embankments to take as much more land as may be necessary for the proper construction and security of the elevated way. It may construct its way on or upon any stream of water, water companies, water course, street, highway, plank road, turnpike, canal or railroad, which the route of said railroad shall intersect or touch, but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or railroad thus intersected or touched to its former state or to such state as not to unnecessarily impair its usefulness and keep such crossing in repair, Provided that in no case shall any company construct its way without first constructing the necessary culverts and sluices as the natural lay of the land requires for the necessary drainage thereof.

Nothing in this act contained shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream navigated by steamboats at the place where any bridge or other construction may be proposed to be placed so as to block the navigation of such stream nor to authorize the construction of any elevated way or conveyor upon or across or upon any street in any city or incorporated town or village

without the assent of the corporation of such city, town or village. Provided that in case of the construction of such elevated way or conveyor along highways, plank roads, turnpikes, canals or railroads such company shall first obtain the consent of the local authorities having control or jurisdiction of the same or condemn same under the provisions of any eminent domain law now or hereafter in force in this State.

Act of July 1, 1883, page 3333. That no person or persons, incorporation or incorporations shall construct and maintain any elevated railroad or any elevated way or conveyor to be operated by steam or animal power or any other motive power in any street or alley in any city or incorporated village except upon the permission of the City Council or Board of Trustees of such city or village granted upon a petition of the owners of the lands representing more than one-half of the frontage of the street or alley or of so much thereof as is sought to be used for such elevated railroad or elevated way or conveyor and the City Council or Board of Trustees shall have no power to grant permission to use any street or alley or part thereof for any of the purposes aforesaid, except upon such petition of land owners as is herein provided for.

When the street or alley or part thereof sought to be used for any of the purposes aforesaid shall be more than one mile in extent no petition of land owners shall be valid for the purposes of this act unless the same shall be signed by the owners of the land representing more than one-half of the frontage of each mile or fractional part of a mile of such street or alley or of a part thereof sought to be used for any of the purposes aforesaid.

GAS AND ELECTRIC LIGHT COMPANIES.

Act of July 1, 1897. Jones & Addington's Supplement to Illinois Statutes, Vol. 4, page 218. That City Council in cities or the President of the Board of Trustees in incorporated towns shall have no power to pass an ordinance granting to any person or corporation the right and privilege to lay any gas pipes for the distribution of inflammable gas for fuel or lighting purposes or to pass an ordinance granting to any person or corporation the right or privilege to lay in or on the ground or string on poles any wires on, over or by which electricity for

lighting purposes is to be used, conveyed or distributed in any street, alley or public grounds in any such city, town or village, except upon the petition of the owners of land representing more than one-half of the frontage on the street or alley or so much thereof as is sought to be used for the purpose above mentioned or any or either of them and when the street or alley or part thereof sought to be used shall be more than one mile in length no right or privilege to lay pipes or lay or string wires for lighting purposes shall be granted unless a petition therefor shall be presented to the City Council of the city or Board of Trustees of an incorporated town or village in which said right or privilege is sought, signed by the owners of the land representing more than one-half of the frontage of each mile and of a fraction of a mile, if any, in excess of a whole mile measuring from the initial point in such petition of such street or alley and of the part thereof sought to be used for the purposes above mentioned or either of them.

Any person being the owner of or interested in any lot fronting on any street or alley or part thereof as is sought to be used for such purposes, shall have the right by bill in chancery in his or their own name to enjoin any person or corporation from using such street or alley or the part of any street or alley for either of such purposes under any grant by the City Council or Board of Trustees which is not made in conformity with the provisions herein and the sufficiency and the petition herein required shall be ascertained by the Court in which such bill of chancery may be filed.

STREET RAILROADS.

Act of March 7, 1899. Jones & Addington's Supplement to Illinois, page 1236. That any company which has been or shall be incorporated under the general laws of this State for the purpose of constructing, maintaining and operating any horse, dummy or street railroad or tramway may enter upon and appropriate any property necessary for the construction, maintenance and operation of its road and all necessary sidings, side tracks and appurtenances and may, subject to the provisions contained in this act, locate and construct its road upon and over any street, alley, road or highway or across or over any highways in this State in such manner as not to unnecessarily

obstruct the public use of such street, alley, road or highway and interrupt the navigation of such ways. Provided, every such street railway may be operated by animal, cable, electric or other motive power that may have been or shall hereafter be granted to it by the proper public officers or authorities, except steam locomotive engines. When it is necessary for the construction, maintenance and operation of such road or the necessary sidings, side tracks and appurtenances to take and damage private property same may be done and the compensation may be ascertained and made in the manner which may then be provided by law for the exercise of eminent domain.

No such company shall have the right to locate or construct its road upon or along any street or alley or any public ground in any incorporated city, town or village without the consent of the corporate authorities of such city, town or village nor upon or along any road or highway or upon any public ground without any incorporated city, town or village except upon the consent of the County Board. Such consent may be granted for any period not longer than twenty years on the petition of the company upon such terms and conditions not inconsistent with the provisions of this act as such corporate authorities or County Board as the case may be shall deem for the best interests of the public, provided no such consent shall be granted unless at least ten days' public notice of the time and place of presenting such petition shall have been first given by publication in the city or town where such road is to be constructed and except upon the condition that the company will pay all damages to owners of property abutting upon the street, road, highway or public ground upon or over which said road is to be constructed which they may sustain by reason of the erection or construction of the road, same to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain.

That an act entitled "An act in regard to horse and dummy railroads," approved March 19, 1874, and in force July 1, 1874, and an act entitled "An act to amend the title of Sections 1 and 3 of an act entitled 'An act in regard to horse and dummy railroads,'" approved January 9, 1897, in force July 1, 1897, and all acts or parts of acts consistent herewith are hereby repealed.

INDIANA.

CONSTITUTION.

Article 1, Section 23. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Article 2, Section 212. Corporations other than banking shall not be created by special act, but may be formed under general laws.

CITIES.

Burn's Statutes, page 275, Section 3541.

Section 26. Cities have power to construct and establish works for furnishing the city with water and it may authorize any incorporated company or association to construct such works and the city may become a stockholder in any such company or association.

Section 28. Cities may construct and establish gas works and regulate the establishment thereof by individuals or companies and regulate the lighting of streets.

Note—Cities may have power independent of the statutes to provide for lighting. City vs. Braden, 130 Ind., 149.

Burn's Statutes, 283, Section 3541. §3. Cities and towns have the right to regulate and control the kind and location of poles used by telegraph, telephone, electric light and street railway companies.

Burn's Statutes, page 813, Section 4301. Cities and towns have power to light streets, alleys and other public places and such city or town with electric light and contract with any individual or corporation for lighting such streets, alleys and public grounds on such terms and for such times not exceeding ten years, as may be agreed upon.

Section 4302. For this purpose the council or Board of Trustees of such city or town may provide by resolution or ordinance for the erection and maintenance in such streets of poles, wires, conduits, etc.,

Section 4303. Council or Board of Trustees may grant the right to a corporation or person to erect and maintain in

streets, alleys and other public places of such cities or towns, posts, poles and other necessary appliances.

Section 4304. Corporations shall have the right to acquire real estate and rights of way under the rate of assessment of damages as fully as if the time in relation to said writ were incorporated in this act and made a part of the same.

TOWNS.

Burn's Statutes, page 835, Section 4360. The Board of Trustees may contract for lighting the streets in all cases where such works have been located.

Such contract shall not be made for a longer period than one year at a time.

Section 4363. When the majority of the voters wish it, the Board of Trustees shall proceed to construct an electric light plant and may sell light to citizens. See 142 Ind., page 546.

STREET AND INTERURBAN RAILWAYS.

Burn's Statutes, page 1283, Section 5450. Any number of persons, not less than five, may associate themselves together as a corporation for the purpose of operating street railways.

Thornton's Indiana Statutes, Section 5617. Street railway companies may construct their tracks, switches, side tracks and turnouts upon streets of cities and towns, and in the center of such streets. In cities of a population of 100,000 and upwards, interurban companies have the right to use the tracks of other companies from the corporate limits to a central point in the city or town. They shall first have consent of common council to use the streets.

Section 5452. Such company shall be capable of purchasing, holding, using, encumbering and conveying any real or personal property reasonably necessary for its business.

Act of 1899, page 230. In cities between 35,000 and 49,000 inhabitants they shall permit the use of their streets for interurban railway companies in the corporate limits to the central portion of a town upon conditions to be fixed by the authorities thereof.

Thornton's Indiana Statutes, Section 5640. Cities of 50,000 and less than 100,000 shall not grant a franchise for any purpose to exceed a period of twenty-five years and for a less

consideration than 2% of the gross receipts of the business for which said franchise is granted.

Section 5458. In cities of 100,000 or more, the cash fare to be charged by the street railway, shall not exceed 3 cents for any one trip, and passengers shall have the right, without further cash fare, to be transferred upon any other line in the city owned or operated by the same company.

Burn's Statutes, page 1289, Section 5458 "A." It is unlawful in cities of more than 100,000 to charge a cash fare of more than 3 cents for any one trip.

Section 5458. "C." Cities of over 100,000 shall enter into a contract defining the terms upon which street railways shall exercise their franchise.

Section 5458 "D." In any such case, the contract shall specify the term of existence, which shall not exceed thirty-four years.

Under this act, which is the act of 1899, page 260, the city at any time within two years and not later than two years, before the expiration of the contract, may purchase all the property of the company.

Section 5458. "E" and "F." Street railways have the right to mortgage, sell or consolidate their property.

Burn's Statutes, page 1264, Section 5398. Council and Board of Trustees may grant railroads the right to use streets.

Section 5464. Street railways shall first obtain permission from the Common Council before operating street railways.

Section 5465. A street railway may extend its road beyond the city limits, or any persons desiring to build outside of the city may do so after procuring consent from the voters and county commissioners.

Section 5468. Act of 1901, page 461, and February 26, 1903. **Interurban railways** have the right to select the advantageous routes and take voluntary grants therefor and to construct its road not exceeding three rods wide over and upon any land not within the limits of the streets or highways.

It may construct its roads upon or across any stream, water course, railroad or canal and may also construct, acquire and operate a street railway system in the cities and towns in or through which it may run, or extend its said railroad and lines connecting cities and towns.

Act 1899, page 378. Two or more street railroads may consolidate.

Burn's Statutes, Section 5468 "P." **Street railways** may enter into a running or operating contract with or take lease of a road and equipment of other street railways, and in connection therewith may guarantee the payment of bonds or liabilities of such other company.

Section 5472 "A," **Street railways**, with the consent of the stockholders, for the purpose of supplying electricity and steam for heat, light or power, may purchase or otherwise acquire and hold and use plants and other property, real and personal, contracts, easements and franchises for any incorporated company or persons who may be engaged in supplying electricity for light, heat or power, and may convey, mortgage or dispose of same separately and in connection to its street railway.

GAS AND WATER COMPANIES.

Section 5056. **Gas light companies** may lay pipes through the streets and alleys of any incorporated town or city by repairing or making good any injury done thereto.

Section 5051. **Gas light and water works companies** may extend their pipes and mains beyond the corporate limits of such city or town not to exceed the distance of five miles from the corporate limits, and such company shall be authorized to furnish and supply gas or water to any person or corporations residing or located within five miles of the corporate limits.

Section 5088. **Water companies** may hold by franchise from the city or town the right and privilege of operating water works, and shall have the following powers. First:

To enter upon the lands and water of any person, subject to the responsibility of all damages they shall do thereto.

To lay necessary pipes, mains and conduits, under and across ~~any piece~~ of land, water course, road, highway or railroad.

To enter upon lands under or across which said mains, pipes and conduits are laid, and to excavate the same for purpose of changes or repairs.

To use and distribute water from any lake or natural stream in the county in which said water works are built.

To take up and change the pipes and change the source of supply and remove the pumping stations when necessary.

They may condemn, purchase or lease any real estate, right of way, easement or water privilege and use the water from any lake or natural stream of water.

Act of 1903, page 89. Cities with a population between 5,300 and 5,800 are empowered to sell their water works and electric light plants with the buildings and machinery thereto belonging. But such sale shall not be made except upon the two-thirds vote of the Common Council after the appraisalment thereof is made by three disinterested freeholders.

CORPORATIONS.

Act 1901, page 289. The term of existence of a corporation for pecuniary profit shall not exceed fifty years. Street railway companies unlimited.

Act of 1903, page 181. **Two or more street railways or interurban railways** may intersect, join or unite its railroad with any other in this State or in any adjoining State, and such company may merge and consolidate the stock of the respective companies and make one stock company of such companies.

Act of 1903, page 250. **Every electric railway, traction company or interurban railroad company** operating cars on railway tracks by means of electricity for a distance and continuous route of over eighteen miles, shall provide and maintain a suitable water closet and a tank containing drinking water in every motor passenger car for the convenience of the traveling public.

Act of 1903, page 349. Street railways and interurban railways are authorized to issue preferred stock not exceeding one-half of the company's total capital stock, providing that all stockholders shall vote in favor of the issue of the preferred stock.

Act of 1903, page 331. Street railways may sell, lease or otherwise transfer its property and franchises, providing it shall be authorized to do so by a majority vote in value of all the shares of the company. The shareholder not voting for said sale shall be paid by the purchaser the value of his stock under the conditions set out in the act.

Municipalities cannot grant an exclusive franchise.

The laws do not fix (except in a few instances) any time limit for a franchise right. When the franchise has no time limit

fixed therein, the courts in this State have not decided whether it is a mere license or will be recognized as a perpetual right, or a right during the life of a corporation.

INDIAN TERRITORY.

MUNICIPAL CORPORATIONS.

Section 507, Statutes of 1899. The city council shall have the care, supervision and control of all the public highways, bridges, streets, alleys, public squares and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances.

Section 523. They shall have power to provide a supply of water by construction and regulation of pumps, cisterns, reservoirs or water works, to prevent the unnecessary waste of water, to prevent the pollution of the water and injury to the water works and for the purpose of establishing and supplying water works any municipal corporation may go beyond its territorial limits; and its jurisdiction, to prevent or punish any pollution or injury to the stream or source of water or to the water works, shall extend five miles beyond its corporate limits.

Section 524. They shall have power to provide for lighting the streets and alleys of the city by gas or otherwise, and authorize the construction of gas works and of street railroads.

Section 525. For the purpose of providing water, gas or street railroads the mayor and council may contract with any person or company to construct and operate the same, and may grant to such person and companies, for the time which may be agreed upon, the exclusive privilege of using the streets and alleys of such city for such purpose or purposes.

Acts of Congress are the laws governing the Indian Territory, and unless Congress otherwise provide, certain general laws of the State of Arkansas, in force at the close of the session of the General Assembly of that State of 1883, as published in 1884 in a volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally applicable or in conflict with

any law of Congress, are extended over and put in force in the Indian Territory; that is to say, among other things, the provisions of the said General Statutes of Arkansas relating to municipal corporations and to private corporations were and are now in force in this territory, so that the laws of Arkansas as laid down in Mansfield's Digest applicable to the rights of public service corporations to use and municipalities to grant rights of such corporation to occupy the street would apply in this Territory.

Corporations may be created without limitations of life, and the Supreme Court of the State of Arkansas in construing the laws relating to monopolies holds that as Section 507, which gives the City Council the care, supervision and control of public highways, bridges, streets, alleys and public squares, the municipalities through its council has the power to grant to electric companies, water and street railway companies which are duly incorporated to use the streets and highways for the laying of tracks, pipes and pole lines. Inasmuch as the constitution of Arkansas provides that perpetuities and monopolies are contrary to the genius of a republic, it would seem to be against the policy of the law of this State, and would seem that municipalities in the Territory would have no right or power to grant perpetual franchises.

IOWA.

CITIES AND TOWNS.

WATER AND GAS WORKS AND ELECTRIC PLANTS.

Code of Iowa, 1897, page 303, Section 720. **Vote upon franchise by electors.**—Cities and towns shall have the power to purchase, establish, erect, maintain and operate within or without the corporate limits of any city or town water works, gas works or electric light or electric power plants through the necessary reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus and other requisites of said works or plants, and lease and sell the same.

They may also grant to individuals or private corporations the authority to erect and maintain such works and plants for a term of not more than twenty-five years and may renew and extend the term of such grant; but no exclusive franchise shall be thus granted, extended or renewed. No such works or plants shall be authorized established, erected, purchased, leased or sold, or franchise extended or renewed, unless the majority of the legal electors voting thereon in favor of same at and by special election.

Section 721. Election, when held.—The council may order any of the questions provided for in the preceding section submitted to a vote at a general election or at any one specially called for that purpose, or the mayor may submit said question to such vote upon the petition of twenty-five property owners of each ward in the city or of fifty property owners of any incorporated town. Notice of such election shall be given in two newspapers published in said city or town, if there are two; if not, then in one, once each week for at least four consecutive weeks. The party asking for a renewal or extension of such grant shall pay the cost incurred in holding such election.

Section 722. May condemn land.—They shall have the power to condemn and appropriate so much private property as shall be necessary for the construction and operation of said works or plants as provided for the condemnation of land for city purposes. To issue bonds for the payment of the cost of establishing same, including the cost of the land condemned on which to locate them, to confer by ordinance the power to appropriate and condemn private property for such purpose upon any individual or corporation authorized to construct and operate such works or plants.

Section 725. Regulation of and fixing charges.—They shall have power to require every individual or corporation operating such works or plants, subject to reasonable rules and regulations, to furnish any persons applying therefor on the lines of its pipes, mains, wires or other conduits, with gas, water, light or power and to supply said city or town with water for fire protection and with gas, water, light and power for other necessary public purposes and to regulate and fix the rent and rate for water, gas, light or power, and regulate and fix the

charges for water meters, gas meters, electric light or power meters or other devices or means necessary for determining the consumption of water, gas, electric light or power, and those powers shall not be abridged by ordinances, resolutions or contracts.

Note.—It is not necessary that a vote of the electors precede the passage of an ordinance for the establishment of water works. While it is the approving vote that authorizes their election, yet the council may provide beforehand as to the conditions on which the vote is asked. *Taylor vs. McFadden*, 84 Ia. 262; *Hanson vs. Hunter*, 86 Ia. 722.

The notice required to be given under the statute shall not only advise that the franchise is desired, but also the full terms thereof, so that the voters could know whether they wanted to allow the franchise or not. *Hall et al. vs. City of Cedar Rapids*, 88 Northwestern Rep. 448.

Section 756. They shall have power to light streets, avenues, alleys, highways, public places, grounds, buildings, landings, market places and wharfs.

Code of 1897, Section 955, page 380. **Cities under special charters** shall have power to establish, erect, purchase, lease, maintain or operate, within or without the corporate limits, water works, gas works, electric light or electric power plants, through the necessary reservoirs, mains, filters, streams, trenches, pipes, drains, poles, burners, machinery, apparatus and other requisites of said works and said plant, but no such works or plants shall be thus established, erected, purchased or leased unless the majority of the electors voting on such proposition shall vote in favor of same at the general or special election. They may also grant individuals or private corporations the authority to erect, maintain or purchase such works or plants, street railways, or telephone systems for a term of not more than twenty-five years and may renew and extend the term of such grants for a period not exceeding twenty-five years. But no exclusive franchise shall thus be granted, extended or renewed; and no franchise shall be granted or authorized until after notice of the application therefor has been published once each week for four consecutive weeks in some newspaper published in such city.

Section 956. **Vote of the people.**—The council may order

any one of the questions, including the granting to individuals or corporations authority to locate, maintain or purchase water or gas works, electric light or power plants or street railways or telephone systems, provided in the preceding section, submitted to a vote at the general election or one specially called for that purpose, or the mayor shall submit such question to such vote upon the petition of twenty-five property owners in each ward in the city. Notice of such election shall be given in two newspapers published in said city if there are two; if not, then in one, once each week for at least four consecutive weeks. The party asking for the renewal or extension of such franchise shall pay the cost incurred in holding such election.

Section 959. **Such cities shall have power to regulate telegraph, district telegraph, telephone, street car, electric light and power companies,** subways and wires, and provide the manner in which the poles for same shall be placed, including the right to construct subways under and upon the streets, alleys and public places. To compel companies having wires on the same street or alley to use the same poles and subways upon reasonable terms. To regulate the installation and connections of electric light or by wires in public and private buildings, and forbid the use of such wires and apparatus for the use and transmission of electric current until the same have been inspected and such installation approved by a competent electrician appointed by said city, and fix the compensation or fees for such inspection and approval.

STREET RAILWAYS.

Section 767, Code 1897, page 324. Cities and towns shall have the power to authorize or forbid the construction of street railways within their limits and may define the motive power by which the cars thereon shall be propelled and authorize and forbid the location and laying down of tracks for railways and street railways on all streets, alleys and public places, but no railroad track can thus be located and laid down until after the injury to property abutting upon the streets, alleys or public places or on which said railway track is proposed to be located and laid down has been ascertained and compensated for in the manner provided with reference to taking private property for works of internal improvements.

Section 768. **As to cars.**—On and after November 1, 1898, every person, partnership, company or corporation owning or operating a street railway in this State shall, from November 1 of each year to April first following, provide all cars, except trailers, used for the transportation of passengers, with vestibules enclosing the front platform for the protection of employees operating these cars. Any violation of this section shall be punished by a fine of not less than fifty dollars and not more than \$100 for each day that said cars are operated in violation hereof.

Section 769. **Cities having a population of five thousand or more** shall have power to compel railroad companies to erect, maintain and operate, under such regulations as may from time to time be provided by council, suitable gates upon public streets at railroad crossings, and cities and towns shall have power to regulate the speed of trains and locomotives running over the streets or through the limits of the city or town.

Section 775. **Regulation of poles, wires and tracks.**—Cities and towns shall have the power to authorize and regulate telegraph, district telegraph, telephone, street railway and other electric wires and the poles and other supports thereon by general and uniform regulation, and to provide the manner in which, and the places where, the same shall be placed upon, along or under the streets, roads, avenues, alleys and public places of such city or town, and may divide the city into districts for that purpose.

Section 776. **Vote of people.**—No franchise shall be granted, renewed or extended by any city or town for the use of its streets, highways, avenues, alleys or public places for any of the purposes named in the preceding section unless a majority of the legal electors voting thereon vote in favor of the same at a general or special election. The council may order the question of granting renewal or extension of any such franchise submitted to a vote at a general election, or at one specially called for that purpose. Or the mayor shall submit said question to such vote upon the petition of twenty-five property owners of each ward in the city or fifty property owners in any incorporated town. Notice of such election shall be given in two newspapers in said city or town, if there are two; if not, then in one, once each week for at least four consecutive weeks.

The clerk shall prepare the ballots and the proposition shall be submitted as provided for in the chapter for elections. The party applying for a franchise or for a renewal or extension thereof shall pay all expenses incurred in holding the election.

Section 834. **All railway and street railway companies** shall be required to make, reconstruct and repair all paving, graveling or macadamizing between the rails of their tracks, and one foot outside thereof, at their own expense, unless by ordinance of the city or by virtue of provisions or conditions or any ordinance of the city under which said railway or street railway may have been constructed or be maintained, it may be bound to pave, gravel or macadam any other portions of said street, and in that case such railway or street railway shall make, reconstruct and repair the paving, graveling and macadamizing of that part of the street specified by said ordinance and the reconstruction and repair thereof shall be of the material and character ordered by said city and shall be done at the same time the remainder of such improvements is made, reconstructed or repaired. When the same is made said company shall lay, in the best approved manner, such rail as the council may require. They shall keep the paving, graveling and macadamizing between said rails and one foot outside thereof, or such other part as they are liable to construct and maintain, up to grade and in good repair, using for such purpose the same material as is used for the original paving, graveling and macadamizing, or such other material as the council may order. If the owners of said railway or street railway shall fail or refuse to comply with the order of the council to make, reconstruct or repair such paving, graveling or macadamizing, such work may be done by the city and the cost and the expense thereof shall be assessed upon the real estate and personal property of said railway or street railway company within the corporate limits of said city and against such railway or street railway in the manner hereinbefore provided for the assessment of such cost against abutting property and the owners thereof.

Section 835. **Before any street railway company** shall lay its tracks upon any street that has been paved and which at the time is not being repaved, it shall pay into the city treasury the value of all paving between its tracks. and one foot outside

thereof, which value shall be determined by the city council, but in no case shall exceed original cost of the paving; and the money thus paid shall be refunded to the abutting property owners on said street in proportion to the amounts originally assessed against the property abutting thereon.

Section 964. Such cities shall have power to order any railway or street railway to construct and maintain, under the direction and subject to the approval of the city engineer, culverts and drains across its right of way on any street, highway or other public place as such council may deem necessary; and if any street railway or railway company neglect or refuse for more than thirty days after such notice as may be prescribed by resolution to comply with the requirements of any such order, the city may construct such culvert or drain and recover the cost thereof from such company.

Supplement to Code, 1902, Section 2026. **Extension of street railway.**—Any corporation organized under the laws of this State to operate a street railway in any city or town, may, for the purpose of extending its railway beyond the limits thereof, locate, build and operate by animal or other power, its road over and along any portion of the public road, which is 100 feet or more wide; Boards of Supervisors are authorized to accept for road purposes, conveyances of land adjoining any such road or part thereof, sufficient to increase the same to the width of 100 feet; but if it is inexpedient and impracticable to increase the width thereof to 100 feet, the Board of Supervisors may permit such interurban railway company to construct and operate its railway along and upon such highways under such restrictions and regulations as the Board may deem advisable, but only upon the written consent of three-fourths of the residents owning property abutting upon such highways.

Section 2027. **Owners of land.**—Unless the owners of the land abutting each side of said road shall consent to such use, the railway company shall pay all damages, which shall be ascertained and paid in the same manner as is provided for taking private property for works of internal improvements, and it shall also be liable for all damages resulting from the carelessness of its officers, agents or servants in the construction or operation of its railway.

Section 875. City engineer.—Cities shall, with the advice of the city engineer, superintend the laying of all gas, water and steam heating mains, and all connections therefor, and stretching and laying of all telephone, telegraph, district telegraph and electric wires, in the manner provided by the ordinance of such city.

Note.—As to the powers of cities and towns in this State to grant franchises prior to the acts above referred to, see the cases of *Levis vs. The City of Newton*, 75 Fed. Rep. 884, and *Thompson-Houston Electric Light Co. vs. The City of Newton*, 42 Fed. Rep. 723.

COUNTIES AND TOWNSHIPS.

The board of supervisors has the supervision of the roads in the county with the power to vacate, establish and change them, as herein provided, and to see that the laws in relation to them are carried into effect.

INTERURBAN STREET RAILWAYS.

Supplement to Code 1902, page 212, Section 2033. Any street railway operated upon the streets of a city or town by electricity or other power other than steam, which extend beyond the corporate limits of such city or town to and entering said town or village, shall be known as an interurban railway, and shall be a work of internal improvement.

Section 2033 B. The word railway or railway company or railway corporation, railroad or railroad company or corporation as used in the code and acts of the General Assembly now in force or hereinafter enacted are hereby declared to apply to interurban railways, and the acts applying to and affecting railways are declared to affect and apply in full force to interurban railways.

Section 2033 C. Any street railway within the corporate limits of any city or town or any city or town acting under the special charter upon such streets as it shall use for transporting passengers, mail and baggage and such parcels and packages and freight as it may carry on its passenger or combination baggage cars, are to be deemed a street railway and

governed and be subject to the laws governing street railways.

Section 2033 D. Cities and towns and cities acting under special charters shall have power to authorize or forbid the construction of such railways upon or over or along the streets, alleys and public grounds within their limits and to prescribe the conditions or regulations under which said railways shall be constructed and operated within said limits, but the right to operate as a street railway shall not be granted for a period exceeding twenty-five years.

KANSAS.

CONSTITUTION—BILL OF RIGHTS.

No special privileges or immunities shall ever be granted by the Legislature which may not be revoked or repealed by the same body, and the power shall not be exercised by any other tribunal or agencies.

CITIES.

POWER TO GRANT FRANCHISES AND OWN PLANTS.

General Statutes, 1901, page 920. **Consent of land owners.**—It shall be unlawful for the mayor and city council of first class cities having a population of over 40,000 to grant, give or sell to any railway or street railway the right to build, construct or operate any railway or street railway upon or along any public street in the city without having first obtained the consent of a majority of the persons owning real estate fronting upon said street.

Note.—Query, whether or not this section is repealed by the Act of 1903 hereinafter set out.

Act of March 13, 1897. Section 12, page 172. **Franchises with the right of city to purchase.**—No renewal or original grant, lease or contract provided for in this act shall con-

tinue for a longer period than twenty years, and any such grant, lease or contract may be terminated at any time after the expiration of ten years from the making of same or such less time as may be fixed at the time of making the grant, lease or contract, and the city may acquire title to any gas light, electric light, electric power, water works or heating plant of any private corporation upon the expiration of any existing grant, lease or contract now in force with any corporation and upon the termination of any future grant, lease or contract. The city may, upon the termination of any grant, lease or contract, or at any time after the expiration of ten years from the making of such grant, lease or contract, or at the expiration of such less time as may be stipulated in the grant, lease or contract, file a petition in the district court of the county in which said city is situate against the owner or owners of such plant and others interested therein, and, among other things, pray that the city may be permitted to acquire the title thereto. Thirty days' notice shall be given to all persons interested in said property at the time for the hearing of the application by publication in some weekly newspaper, the first publication of which shall not be less than thirty days prior to the time of the hearing and also by delivering a copy of such notice to the manager of such plant, if such manager can be found within the county. At the time set for the hearing of such petition, the court shall appoint three disinterested commissioners non-resident of the city, one of whom shall be named by the court and the other two by the county commissioners of said county. The commissioners so appointed after taking an oath, shall forthwith proceed to determine the then present value of any such plant, exclusive of the city's franchise or property element therein, which value shall be a fair value thereof, within thirty days after their appointment, unless for good cause the time be extended by the court or the judge thereof, the commissioners shall file their report with the clerk of the district court. If any commissioner so appointed fails to act or his place become vacant, for any other reason, the court shall fill such vacancy. The action of a majority of such commissioners shall be deemed to be the action of the com-

missioners. Within ten days after the filing of such report, any citizen of such city or other person interested may file exception thereto, and thereupon the court or judge thereof shall appoint a time not more than 30 days from the filing of such report for the hearing of such exceptions, which exceptions shall be heard in a summary manner, without pleading, and upon such hearing the court may confirm the said report, or may set the same aside, as shall be just and appoint new commissioners.

No appeal shall lie from the action of the court upon the hearing of exceptions to any award of the commissioners. At any time within four months after confirmation of such award by the court the city may deposit the amount of the award with the treasurer of the county for the use of the owners or others interested in such plant. From the time of making such deposit the city shall be absolute owner of any and all property and rights of the corporation.

Note.—This section is repealed as to cities of first class by the Act of May 13, 1903, but is not repealed as to cities of first and second class, see act 1903, page 264.

CLASSIFICATION OF MUNICIPALITIES.

Cities are divided into three classes. The first class consists of those containing more than 15,000 inhabitants; the second of those containing more than 2,000 and not exceeding 15,000, and the third of those containing not more than 2,000.

CITIES OF THE FIRST CLASS.

POWER OF THE MAYOR AND COUNCIL TO PROVIDE FOR LIGHTING STREETS.

Act of May 13, 1903, page 178, Section 51. Mayor and council shall provide and fix maximum rates and charges and regulate the collection of same of all water, electric light, heat, power, gas and telephone service and any other commodity or service furnished to such city and its inhabitants by any person or corporation authorized by such city by virtue of a franchise or ordinance or that may be hereafter

authorized by virtue of the ordinance, but the rates and charges shall be reasonable and may be reviewed by the district court.

Section 54. They shall have power to grant to any person or corporation the use of the streets, alleys or public ground for the purpose of laying water, steam or gas pipes or conduits for electric light or power, telephone, telegraph or other use, to be used in furnishing or supplying such city and its inhabitants with water, light, heat and power, and grant the power to make contracts with persons or corporations to mine coal, oil or gas within the limits of such city under such restrictions as shall protect public and private property and insure proper remuneration for such grants. No such franchises shall be granted for a longer period than thirty years.

Section 58. They shall have power to regulate parks, public grounds, depots, depot grounds and places of storage of freight and goods, and provide for and regulate the construction and passage of the railroads and street railways through the streets, alleys and public grounds of the city, but the rights for such purposes shall not be exclusive.

Section 59. They shall regulate the crossing of railway and street railway tracks and the running of street railways or cars and railway engines and cars in the city and prescribe rules relating thereto.

Section 165. **Cities of more than 50,000.**—That in cities having a population of more than 50,000, the mayor and council shall have the power and they are authorized to grant to any person, company or corporation the use of the streets, alleys and public grounds for the laying of water or steam pipes and conduits to be used in supplying such city and its inhabitants or any person or corporation with water, and the mayor and council are authorized to contract for and fix the rules for private consumers for a period not exceeding the time hereinafter specified, and contract with any person or corporation for supplying the city and inhabitants with water for fire protection and for public and private use, but no franchise or contract shall be made or granted for a longer period than thirty years.

Section 166. **Cities of less than 50,000** are authorized to contract with any person or corporation for supplying water to the inhabitants and for purposes necessary to the city upon the

conditions of this act and upon like conditions to grant any renewal or extension of any existing grant to the city for supplying water, but the franchise shall not be granted or extended for a period exceeding thirty years.

Section 167. As a condition precedent for the renewal or extension or for granting an original franchise or entering into an original contract by any city with such company or individual, an ordinance shall be passed by the mayor and council which shall state the terms, conditions and considerations of such grant, contract and franchise, which shall provide, among other things, that the city and such person, company or corporation may enter into a contract determining the price of each hydrant of every contract or franchise entered into or so granted by such city, shall contain an obligation that the plant, with all pipes, etc., within or without the city limits, and the company shall pay to the city on the first day of January and July of each year during the existence of the contract or franchise 10 per cent of its net earnings over and above 8 per cent on the investment, after deducting the reasonable cost of maintenance, operation and taxes.

Council shall have the right to fix the maximum rates to be charged for water for public and private purposes.

Section 168. After ten years from the granting of such franchise, which shall be for a period of thirty years, the city may purchase and acquire the ownership of the water plant.

Section 169. They may permit any person, corporation or company to manufacture, sell and furnish gas light, electric light, power or heat to any city; and street railway to operate on and over the streets and public grounds of the city, and may extend and renew any existing contracts with any persons, corporations or company for the construction and operation of a street railway over and along the streets and for the supply of gas, electric light, power and heat to any city in this State, which shall be specially provided for in the ordinance and contracts granting and giving the franchise, but they shall not be for a period longer than thirty years.

Section 170. As a consideration for the franchise to lay pipes through the streets for gas or heat or to string electric wires for light or power, or to construct, maintain or operate electric railways through the streets, the company shall pay the

city 10 per cent of its net earnings over and above 10 per cent net on its investment, and the contracts and ordinances for this purpose may be extended for a period of thirty years.

The council may fix a reasonable schedule of maximum rates to be charged for public and private purposes, including street lighting and to the inhabitants for gas light, electric light, electric power and the rates of fare.

Section 170. No renewal of the contract or franchise shall be for a longer period than thirty years, and the city may acquire title to any gas light, electric light, electric power, street railway or heating plant of any private corporation upon the termination of any future grant, which shall be done in accordance with the act. So far as it relates to cities of the first class, this act repeals Chapter 37 of the laws of 1881, and supplemental thereto, and Chapter 82 of the laws of 1897.

Act of May 7, 1903, page 254, Section 1. **Duration of franchise.**—The mayor or council are authorized to grant to any person or corporation the use of the streets, alleys and public grounds for the erection of electric light poles and wires or for the laying of gas, water and steam pipes or conduits to be used in supplying said city and its inhabitants or any person or corporation with water, light, heat or power, and no franchise shall be granted for a longer period than twenty years.

Section 2. **Fixing rates.**—The mayor and council of any city having a population of more than fifty thousand inhabitants are authorized to contract for and fix rates of private consumers for a period not exceeding twenty years with any person or corporation for the supplying to said city and its inhabitants with water for fire protection, or supplying with water and light for streets, alleys, parks and public buildings or furnishing water, heat, light or power for public use.

CITIES.

SECOND AND THIRD CLASS.

Act of 1903, page 264, Section 1. The mayor and council of cities of second and third classes have power and are authorized to grant to any person, company or corporation the use of the streets, alleys and public grounds for the location of electric light poles and wires and for laying of gas, water and

steam pipes or conduits to supply the city and inhabitants thereof with water, light, heat or power for a period not exceeding twenty years.

Section 2. The mayor and council of cities of second and third classes are authorized to contract for and fix rates for private consumers for a period not exceeding twenty years; and cities of second and third class may purchase, provide and contract for the construction of and operate gas plants, electric plants, electric power and heating plants and water works.

Under the acts of 1881, 1897, 1901, 1891 and 1895, which were amendments to prior acts, cities of the first, second and third class were authorized to grant the right of way for electric light and gas companies and street railways, and to own, construct and operate electric light, gas and water works, but the act of 1903, referred to, so far as apply to cities of the first class, repeals Chapter 37, the laws of 1881, and all laws supplemental thereto, and Chapter 82, laws of 1897, and all laws supplemental thereto; and so far as second and third class was concerned, repealed Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9, Chapter 82, laws of 1897, and Section 1, Chapter 107, laws of 1901.

COUNTIES.

General Statutes 1901, page 371, Section 1654. The Board of County Commissioners of any county may authorize any person or corporation to construct, maintain and operate a street railway across or along any state or county road or highway in the county outside of any city, town or village on such terms as the board may deem advisable.

CORPORATIONS.

General Statutes 1901, page 280. Corporations may be formed by five or more persons. Under the general act, a corporation may be formed to supply water to the public, manufacture and sell gas, or to supply light or heat by any other means, and for the construction and maintenance of a street railway. The time for existence may be limited to twenty years.

KENTUCKY.**CONSTITUTION.****BILL OF RIGHTS.**

No grant of exclusive, separate, public emoluments or franchises shall be made to any man or set of men except on condition of public service.

All franchises, privilege or incorporation shall remain subject to revocation, alteration and amendment.

MUNICIPALITIES.

Section 156. **Cities and towns are divided into six classes, and are covered by general laws.**

The first class contains 100,000 or more inhabitants, the second class from 20,000 and not more than 100,000, the third class from 8,000 to 20,000, fourth class from 3,000 to 8,000, fifth class 1,000 to 3,000, sixth class less than 1,000 inhabitants.

Section 163. **No street railway, gas, water, steam heating, telephone or electric company within the city or town shall be permitted or authorized to construct its tracks, lay its pipes or mains, or locate its posts, poles or other appurtenances along the streets, etc., without the consent of the proper legislative bodies or boards of such cities or towns being first obtained.**

Section 164. **Term of franchise.**—No franchise shall be permitted for a term exceeding twenty years.

Bids for.—Before granting the franchise the municipality shall first, after due advertisement, receive bids therefor and award the same to the highest bidder.

Section 203. No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from liability for the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use and enjoyment of such franchise or any of its privileges.

Note.—Bailey vs. Southwestern Railway, 22 R. 1398.

CITIES OF FIRST CLASS.
FRANCHISES.

Act of March 22, 1904, page 172. Eighteen months before the expiration of any franchise, it shall be the duty of the proper authorities of the city to provide for the sale of a similar franchise to the highest bidder on terms and conditions which shall be fair and reasonable. Provided if there is no need or necessity for the kind of utility and if the municipality shall desire to discontinue the kind of service in question, it may do so.

If the municipality desires to own the plant and shall, within two years, offer to purchase same at a fair valuation, the city shall be under no obligation to sell, renew or continue the franchise in question. The valuation of the plant to be purchased by the city is to be determined by three persons. The plant shall be valued as a going concern, but no allowance shall be made for future growth. The terms and conditions in Section 1 shall specify the quality of service to be rendered and the price which shall be charged for the service.

No exclusive franchise shall be acquired under this act, nor shall the sale of a franchise to one person or corporation prevent a subsequent sale of a similar franchise to another person or corporation.

CITIES OF SECOND CLASS.

Act of 1894, Section 3058, §6, page 1150, General Statutes. Cities of second class may provide for themselves or through others for lighting streets and inhabitants and to regulate the quality and quantity of light and the method and appliances for furnishing same; and to compel any lighting company to change and relocate gas mains, pipes, poles and wires and to place those above the surface of the ground under it.

Section 3058, §20, page 1152, General Statutes. They shall direct and control the laying and construction of steam, electric, street and other railroads, etc.

THIRD CLASS.

Section 3290, §35, page 1223, General Statutes. **Rights of way.**—They may grant right of way to street railways, gas,

water, steam heat and electric companies over the streets, alleys, lanes and public grounds for a term not exceeding twenty years. Before making such grant the city shall advertise for thirty days and receive bids for same and award the grant to the highest and best bidder.

Act of June 14 1893, Section 3290, page 1219, General Statutes. Cities of the third class have power to provide the city and inhabitants with water, light, power, heat and other service by contract or by works of its own erected within and without or beyond the boundaries of the city.

CITIES OF FOURTH CLASS.

Section 3490, §8, page 1265, General Statutes. Cities of the fourth class have the right and power to provide the city with water, and erect, purchase or lease water works and maintain the same or make contracts with any person or corporation for such purposes. They may provide for lighting the streets, market houses and other public buildings, rooms and offices with gas or in any other manner.

Section 3490, §25, page 1267, General Statutes. Council may grant rights of way over the streets and public grounds to any railroad, street railroad company as they may deem proper, and shall regulate the speed of cars and may grant the right of way over the streets and highways to any water company, electric light, gas and telephone companies.

CITIES OF FIFTH CLASS.

Section 3637, page 1306, General Statutes. Cities of the fifth class may contract for supplying the city with water and lights. They may rent water fronts for a term not to exceed twenty years.

CORPORATIONS.

Section 538, General Statutes. Any number of persons, not less than three, may establish a corporation for the transaction of any lawful business, but banking, building and loan, trust, insurance and railroad corporations shall, in addition to the provisions of this article, which are not inconsistent with the laws relating especially to them, be organized in a manner and subject to the provisions of such laws.

Section 555. Any two or more corporations organized under this chapter or the laws of this or any other state may consolidate into a single corporation, provided that such consolidated corporation shall become and be a domestic corporation for all purposes and shall be subject to the jurisdiction of the courts of this state.

If the franchise and property of a corporation is sold, the purchaser may organize the corporation for the operation of same, and shall have the same rights and franchises which shall have been granted to the company's franchise.

Section 568. Any stockholder objecting to the consolidation who gives notice twenty days after the agreement of consolidation, demanding payment of his stock, such consolidation can, within three months thereafter, pay to him the market value of the stock at the date of the consolidation.

INTERURBAN ROADS.

Act of March 11, 1902, Section 842, General Statutes. All interurban electric railroad companies authorized to construct ten or more miles in length heretofore or hereafter incorporated under the general railroad laws, shall be under the same duties and responsibilities so far as practicable, and shall have the same privileges as is now granted to or conferred upon railroad companies existing, operating and incorporated under the general laws of this state.

Interurban roads shall not, unless by special contract with electric street railways, receive, transport or deliver passengers within points in the limits of cities or municipalities which are contiguous or adjacent and into and through which electric street railways are operated while using the tracks of such electric street railway therein.

Note.—Although the constitution provides that no man or set of men are entitled to exclusive, separate, public emolument or privileges, it seems that this limitation does not apply to corporations where their business duties or obligations have the necessary relation to the service of the public, general or local, and in the absence of legislative act forbidding the grants of exclusive rights, it seems that the courts hold that such grants may be granted.

In the case of *Newport vs. Newport Light Company*, 84 Kent 166, held that the exclusive and irrevocable privilege may be granted to a company to light the city with gas.

Although in most states it has been held that the exclusive right is against public policy.

LOUISIANA.

CONSTITUTION.

Article 48, Section 12. The General Assembly is without power, by special legislation, to create corporations or amend, renew, extend or explain the charters thereof, excepting municipal corporations having a population of not less than 2,500 inhabitants, or to the reorganization of levee districts and parishes.

Article 48, Section 13. The Legislature cannot grant to any corporation, association or individual any special or exclusive right, privilege or immunity.

See *State vs. Caffery*, 49 An. 1152.

Article 275. General laws shall be enacted providing for the creation of private corporations and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

MUNICIPALITIES.

Revised Laws 1904, page 1065, Municipal corporations are divided into three classes, to-wit: cities, towns and villages. Those having 5,000 or more inhabitants are cities; those having less than 5,000 and more than 1,000 inhabitants are towns, and those having less than 1,000 and more than 150 inhabitants are villages. A municipal corporation, however, shall not be created with less than 250 inhabitants.

POWERS OF CITIES, TOWNS AND VILLAGES.

Revised Laws 1904, page 1069, Section 13. Cities, towns and villages have the right to sue and may be sued, and they may

purchase and hold real estate and personal property, and such right to purchase and hold real estate shall apply to that within the corporate limits for all proper purposes and for parks, cemeteries, hospitals, school houses, houses of correction, water works, electric light and sewerage.

Revised Laws 1904, Section 15, Paragraph 7. **Street Railways.**—The mayor and aldermen have the right to regulate parks, public grounds, depots, depot grounds and places of storage of freight and goods within the corporate limits, and to provide for and regulate the construction and passage of railways and street roads through the streets, avenues, alleys and public grounds of the municipality, but the rights to construct railroads shall not be exclusive.

Section 15, Paragraph 7. **Electric poles, etc.**—The mayor and aldermen may grant the right for the erection of telegraph, electric light or telephone poles, posts and wires along and upon any of the streets, alleys and ways of the municipality and change, modify and regulate the same, but such privilege shall not be exclusive.

Section 15, Paragraph 8. **Water, steam and electric pipes and conduits.**—The mayor and aldermen may grant to any person or corporation the use of the streets, alleys and public grounds for the purpose of laying gas, water, sewer or steam pipes or conduits for electric light, to be used in furnishing or supplying the municipality and its inhabitants, but a franchise shall not be granted for such purposes for a period longer than twenty-five years, nor shall it be exclusive.

Section 15, Paragraph 23. **Water works.**—Municipalities have the right to erect, purchase, manufacture and operate water works and to regulate the same and prescribe the rates at which water shall be supplied to the inhabitants or to contract with any person for the erection and maintenance of water works for a term not exceeding twenty-five years, but a contract for the erection, purchase or maintenance of water works shall not be entered into until submitted to a vote of the qualified electors and approved by a majority of them.

Section 16, Paragraph 5. The mayor and aldermen shall provide for the lighting of the streets, parks and public grounds.

TOWNS HAVING MORE THAN 1,000 INHABITANTS.

Revised Laws, page 1076, Act of 1902, Section 17, Paragraph 3. They shall regulate the crossing of railroad and street railroad tracks and prescribe rules and regulate the same and shall regulate the running of street railroads or cars and railway engines, cars and tracks within the limits of the city or town or incorporated parish, and prescribe rules and regulate the same governing the speed thereof.

Revised Laws 1904, page 1127. **Sale of franchise.**—**Cities of over 50,000 inhabitants**, when having for sale or lease any franchise or privilege pertaining to the comfort or convenience of the residents thereof, and when there are more than one of the same kind of franchises, leases or privileges to be disposed of by sale, lease or grant or otherwise, they shall sell, lease or grant such franchise or lease separately and not collectively.

Revised Laws 1904, page 1127, Section 1. **Expropriate electric and gas works.**—Municipal corporations are granted the right to expropriate any electric light, gas or water works plant or property belonging to any person, firm or corporation when deemed necessary for the public interests, and when the municipality cannot agree with the owners thereof for its purchase the act provides for the manner of appropriation, appraisement, price, etc., to complete the purchase.

Revised Laws 1904, page 1130. **Vote of people.**—**Cities and towns having a population of less than 25,000** have authority to grant to railroads and other corporations the right to use and occupy the streets and alleys therein and to obstruct the same or parts thereof with buildings necessary to be used by said corporations, provided that prior to the said grant, a majority of the property tax payers in said city or town voting at an election to be called for such purpose shall approve said proposed grant, and provided further that in making said grant the said cities and towns through their council shall impose such conditions and make such charges as they may deem fit.

PARISHES.

Revised Laws 1904, page 1276, Act 1902, Section 1. **Police juries** of the parishes have authority to sell and grant franchises for the construction, maintenance and operation of rail-

ways utilizing electric or other motive power other than steam on the public roads and highways in the State.

Section 2. There must first be a written petition signed by a majority in number and amount of the abutting property holders along any public road or roads requesting the police jury to advertise and sell a franchise to construct, maintain and operate, for a term mentioned in the petition not to exceed ninety-nine years, a railway utilizing electric or other motive power other than steam on said road.

The jury shall canvass the petition presented, and if a majority of the property owners has signed it, they shall fix the term and specifications of such franchise and advertise the same for thirty days in the official journal of the parish.

Revised Laws of 1904, page 1278, Section 5. The abutting property holders along any road extending into or through two or more parishes may petition their respective police juries to sell as one franchise the rights mentioned. The several juries shall canvass the petition, and if found to be signed by a majority in number and amount of the property holders, they shall select a committee composed of three members of such police jury to meet and act with a like committee of the several police juries of the parishes through which the proposed railroad is to be constructed. Said committee shall fix the term and specifications of the franchise and the franchise agreed upon shall be submitted, at a special meeting called for the purpose, to the respective police juries for their approval and adoption, and upon its approval it shall be advertised and sold at the time and place and in the manner fixed by said committee.

Section 8. The franchise shall be sold to the person or corporation offering at said sale the highest percentage of gross annual receipts to be derived from such franchise during the term thereof, and said percentage shall be estimated on the gross annual income derived from such franchise after deducting only all taxes paid by said person or corporation by reason of the ownership or operation of said franchise.

CORPORATIONS.

Revised Laws 1903, page 220. Any number of persons exceeding six may incorporate for the preservation of life or

property or for a religious, scientific, literary or charitable purpose.

Revised Laws 1903, page 226. It shall be lawful for any number of persons not less than six to form themselves into and constitute a corporation for the following purposes:

For the construction, working and maintaining of railroads, canals, plank roads, bridges, ferries, transportation by pipe lines or other work of public improvement within or without the limits of the state and to construct and carry on works to supply cities and towns with electricity, gas, water, oil, etc.

Revised Laws 1903, page 232. No railroad, plank road, canal or works of drainage, sewerage and land reclamation shall be constructed through the streets of any incorporated city or town without the consent of the municipal council thereof.

Revised Laws 1903, pages 233-234, Act 1902. Railroads, water works and power companies, etc., may borrow money from time to time and issue bonds therefor secured by mortgage or pledge of all of its property, real, personal and mixed.

Revised Laws of 1903, page 246. Any two business and manufacturing corporations whose objects in business are; in general, of the same nature may consolidate.

Many if not all the cities in this State are incorporated under and their powers regulated by special acts, and franchises are sold to the highest bidder in this State.

MAINE.

CONSTITUTION.

Article 4, Section 13. The Legislature shall from time to time provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.

Section 14. Corporations shall be formed by general laws and shall not be created by special act of the Legislature, except for municipal purposes and in cases where the objects of the corporations cannot otherwise be obtained.

TOWNS.

Revised Statutes of 1903, page 81, Section 76. Municipal corporations may contract for and supply water, gas and electric light for municipal purposes for a term of years upon such terms as may be mutually agreed upon from time to time and renew the same.

GAS AND ELECTRIC COMPANIES.

Revised Statutes of 1903, page 554, Section 1. Corporations for the making, generating, selling, distributing and supplying of gas or electricity or both for lighting, heating, manufacturing or mechanical purposes in any city or town or two or more cities or towns adjoining thereto within the state for either or any of the purposes may be organized under the provisions of Sections 5 and 10, inclusive of Chapter 47.

Section 2. A certificate of gas and electric companies shall be prepared and filed and shall specify the city or town or the adjoining cities and towns within which said corporation proposes to make, generate, sell and distribute or supply electricity for the purposes mentioned in Section 1 of this act and no corporation shall be authorized to make, generate, sell, distribute or supply gas or electricity in any city or town not specified in said certificate.

Section 3. Corporations organized under this chapter may purchase, hold and have such real estate and personal property as shall be necessary for the purpose for which they are created.

Section 4. **An electric or gas company** may lay its pipes and wires and construct and maintain its lines in, upon, along, over, across and under the roads and streets in any city or town in which it is authorized to supply gas or electricity.

Section 5. No corporation shall lay its pipes or place its wires under the surface of any road or street or dig up or open the ground in any road or street until it shall have obtained, as prescribed by the following section, a permit in writing from the municipal officers of the city or town in which said road or street is located, but such permit shall not affect the rights of any party or parties to recover damages for injury to persons or property by the doings of any such corporation.

Section 6. All such corporations, wherever chartered or organized, that are engaged in the business of furnishing heat, light or power by electricity or of furnishing gas for light, heat or power, may, in any city or town, place their pipes, wires and cables and all conduits, etc., for conducting and maintaining such wires and cables under the surface of those streets and highways in which such companies are empowered to obtain the location for their pipes, poles and wires subject, however, to the written permit therefor by the municipal officers of such city or town subject also to such rules and regulations as to location and construction as such municipal officers may designate in their permit.

Section 17. No such corporation shall construct lines upon and along highways and public roads without first obtaining a written permit signed by the mayor and aldermen, in case of cities, the Selectmen, in case of towns, and the County Commissioners, in case of plantations and organized townships, specifying the kind of poles, where and how they are to be located and set and the height of the wires above the ground. Before granting the permit fourteen days public notice shall be given and resident owners of property upon the highways to be affected thereby shall have full opportunity to show cause why such permit should not be granted. Such public notice shall be given in the county newspaper when the county commissioners are acting, etc. The decision of the mayor and council and county commissioners may be appealed from.

Section 18. **Owners of land** damaged by the construction of such poles, wires, pipes, etc., may, within six months after such construction, alteration or location, apply to the mayor and aldermen or selectmen to assess and appraise the damages and if damages are assessed, the company shall pay same, together with the costs of the appraisers. The parties may appeal from said assessment to the courts.

AQUEDUCT AND WATER COMPANIES.

Revised Statutes, 1903, page 434. Three or more persons may associate themselves together by written articles of agreement for the purpose of forming a corporation to carry on every lawful business.

Section 11. Aqueduct and water companies may condemn

land. Cities and towns have the power to grant them the privilege to lay their pipes for furnishing the cities and towns or the inhabitants thereof with water.

STREET RAILROADS.

Revised Statutes of 1903, page 543, Section 1. **All street railroad corporations** shall, in addition to their chartered rights, have all the rights and powers conferred from time to time by general laws upon street railway corporations and be subject to the conditions and restrictions and limitations thereby imposed.

Section 2. Any number of persons not less than five may incorporate a street railway.

Section 7. **Every street railway**, before commencing the construction of its road, shall present to the railroad commissioners a petition for approval, giving its location, defining its courses, distances and boundaries, accompanied with a map of the proposed route, with a written approval of the proposed location as to streets, roads or ways of the municipal officers of the cities or towns in which said railroad is to be constructed in whole or in part, with a report and estimate prepared by a skilful engineer. If the municipal officers neglect, for thirty days, to approve a route or if they refuse to approve such route or if such approved route is not accepted by the corporation, the corporation may appeal to the next term of the Supreme Judicial Court. The court shall appoint a committee who shall view the proposed route and make their report to the next term of court, defining the route which, after acceptance, an entry of judgment therein shall be forthwith certified to the railroad commissioners. If the commissioners approve such location, they must determine whether the public convenience requires the construction of such railroad and make a certificate of such determination in writing. If the Board of Commissioners approve the location and find that the public convenience requires the construction of said road, the corporation may proceed with the construction thereof.

Section 9. When the location of a street railway has been approved, the municipal officers may approve such additional location and turnouts and spurs used or to be used by said corporation.

Section 13. **May take land.**—Corporations may take land

outside the limits of the streets, roads or ways and all material in and upon it for the location, construction or convenient use of the road.

Section 16. The location may be changed under the direction of the railroad commissioners and they may be extended to other places upon consent of the Board of Commissioners.

Revised Statutes of 1903, Section 30, page 531. No railroad can assign its charter or any rights under it or lease or grant the control of its road or any part of it or divest itself thereof without the consent of the Legislature.

Section 32. A railroad company, for the purpose of obtaining money to build or furnish its road or to pay debts contracted for that purpose may issue its bonds in such sums not less than \$100, bearing interest and secured in such manner as it deems expedient.

Section 21. But one railroad shall occupy the same streets at the same time, but any railway operating a street railway to any point to which tracks of any other street railway extends may enter upon, connect with and use the same on such terms and in such manner as may be agreed upon by the parties, or if they shall not agree, as may be determined by the Railroad Commissioners.

DURATION OF FRANCHISES.

The Act relating to the granting of rights to use public highways to companies engaged in street railway business, transmission of intelligence, heat, light or power by gas or electricity or water, does not seem to limit the duration of the grant, and therefore indicates that they may be perpetual. No decisions are found in this state as to whether or not such rights can exist in perpetuity.

MARYLAND.**CORPORATIONS.**

Public General Laws, 1903, page 347. Under Class 6, corporations may be organized for carrying on in the state manufacturing, ship building, mechanical business, etc., and for furnishing and selling hot water or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings in any city, village or town in the state and such corporation shall have power to lay pipes or conductors for conducting hot water or steam through the streets, lanes, alleys, squares and highways in such cities, towns or villages with the consent of the municipal authorities of said cities, villages and towns and under such conditions and reasonable regulations as they may prescribe.

Under Classes 13 and 19 corporations may be organized for constructing, purchasing and maintaining electric light wires along through or under the streets of any city, village or town for any useful purpose.

The life of a corporation shall not exceed 40 years but this does not include gas companies.

Class 20, corporations may be formed to own and operate a street railway outside of the city of Baltimore, but no street or passenger railway can exceed 12 miles in length.

Under Class 22 corporations may be organized for the purpose of supplying any city or town and the inhabitants thereof with pure water. General Laws, page 385.

GAS AND ELECTRIC LIGHT COMPANIES.

Any gas light corporations formed under the before mentioned article, shall have full power to manufacture and sell and furnish such quantities of gas as may be required in any city, town or county of the state in which or adjoining which the same may be located for lighting the streets, roads and public or private buildings and for other purposes; and such corporations are authorized to lay conductors or pipes for the transmission of gas in any city, town or county under the streets, squares, alleys and roads thereof, paved or unpaved, subject

to any law or ordinance that may be passed by municipal authorities of the city or town or the County Commissioners having jurisdiction.

General Laws, page 591. **Electric companies** have power to furnish, manufacture and sell electric light and power as may be required in any city or town in Kent, Talbot, Carroll, Somerset and Washington Counties in this state, in which or adjoining which same may be located, for lighting the streets, roads and public or private buildings or for motive power and for other purposes and such corporations are authorized to construct and build lines and conductors under, along, upon or over the streets, squares, lanes, alleys and roads, paved, or unpaved, subject to any law or ordinance that may be passed by the municipal authorities of the cities or towns and the county commissioners having jurisdiction of such streets and roads. The construction, maintenance, renewal and repair of such lines and appliances in Washington County shall be done under such regulations as the mayor and city council of Hagerstown or the county commissioners of said county having jurisdiction shall prescribe. Nothing in this article shall authorize such corporations for the purpose of carrying on business or conducting operations in Baltimore City.

Public General Laws, 1903, page 478. **Passenger railways outside city limits Baltimore.**—Corporations for making turnpikes or plank roads or passenger railways outside of the limits of the city of Baltimore may be formed as hereinabove provided, but no such passenger railway shall exceed 12 miles in length and such turnpikes, plank roads and passenger railways may be constructed on the bed of any county road or in any part thereof by the consent of the county commissioners in writing. When such corporation shall desire to locate its road within the limits of or through any incorporated town or city, it shall obtain the consent of the corporate authorities of each town or city.

Public General Laws, page 483, Section 359. **Water companies** shall have power to lay pipes and other works as shall be necessary to carry out the purpose of the corporation provided the assent of the municipal authorities of the town and city in which the operation of the said corporation shall be carried on, shall be first had and obtained, or in any county out-

side of any town or city, assent of the county commissioners thereto shall first be had; but nothing in this act shall authorize water companies in the city of Baltimore.

Note.—The law relating to incorporation of public utility companies give them the right to use the streets, alleys and public places in any town or city outside of the city of Baltimore by the consent of the municipal authorities thereof.

The city of Baltimore seems to be organized under a special charter, which regulates its powers to grant public utility companies the right to occupy the streets to transact their business.

A great many of the cities and towns are organized under special acts and their charters permit them to grant franchises to use the streets by companies herein mentioned.

Perpetual and exclusive franchises are not allowed in this state.

MASSACHUSETTS.

CONSTITUTION.

Part 1, Article 6. No man or corporation or association of men have any other title to obtain advantages, or particularly an exclusive privilege distinct from those of the community than what arises from the consideration of services rendered to the public.

CORPORATIONS.

Rev. L., 1902, page 950, Section 20. No telephone, telegraph, gas, light, electric light, steam railroad, street railway, aqueduct or water company, established under the laws of this state, shall declare any stock or script dividend or divide the proceeds of the sale of stock among the stockholders, nor shall any such company issue any such shares of stock unless the par value of the shares so issued is first paid in cash to its treasurer.

Section 24, Chapter 122, Section 1 of Rev. L. **Right of electric lines on public ways.**—A company incorporated for the

transmission of electricity for light, heat or power (except lines for heat or power by a street railway company), may construct lines upon and along the public ways and across any waters within the commonwealth by the erection of poles and other fixtures. The mayor or aldermen of any city or selectmen of any town through which the lines of a company shall pass shall give the company a writing specifying where the poles may be erected, the amount of poles and the height of each and the places where the wires may run. After the location of the lines and after giving the company a hearing, they may direct any alteration in the location or erection of same.

Section 3. Owners of land which abuts the highways on which said lines are constructed are entitled to any damage caused thereby and if such damages are not paid within the time prescribed by the statutes, all the poles and wires shall be removed from that portion of the public way that the lands of such person abuts.

Wires, etc.—Corporations shall use strong and proper wires safely attached to strong and sufficient supports and the wires insulated at all points of attachment. They shall remove abandoned wires, shall insulate every wire where it enters a building and shall in cities, affix at the point of support at which the wire or cable containing wires is attached, a tag or mark distinctly designating the owner or user of such wire or cable.

Whenever wires belonging to different owners are attached to poles, cross arm or fixtures, such pole, cross arm or fixture shall be plainly marked with the name or initials of the owner of same.

Act of March 19, 1903, page 125, Section 33. **Must supply electricity and gas.**—Upon petition in writing by any person who is a resident in the city or town in which the corporation is engaged in furnishing gas or electricity, the board of gas and electric commissioners may, after notice, issue an order directing and requiring the company to supply the petitioner with gas or electricity for any purpose upon such terms as are reasonable and legal.

Act of 1903, page 110. **Rate of speed and use of tracks by street railway.**—The board of aldermen or selectmen shall establish such regulations as to the rate of speed and as to the mode of use of the tracks for the street railway in either city

or town, as the interest and convenience of the public may require, subject to the approval of the railroad commissioners.

Act of June 5, 1902, page 362. **Street railway furnishing electricity to municipality.**—The town in which any person or corporation is engaged in business of generating and distributing electricity to sell for lighting purposes and which is not itself engaged in such business and which has voted or shall vote in accordance with the provisions of Chapter 34 of the Revised Laws, etc., construct one or more plants for the manufacture or distribution of electricity for light, may contract for a term not exceeding ten years with any street railway company, for the purchase of electricity from such street railway company for the purpose of furnishing light for municipal use, or for the use of its inhabitants, and the street railway may make contracts for furnishing same, but the same shall not be operative unless the board of railroad commissioners shall, after a public hearing, approve the terms thereof, as is consistent with public interests.

GAS COMPANIES.

Chapter 121, Rev. L., Section 10. No gas company, unless specially authorized, shall issue shares at less than par, nor for an amount exceeding its capital stock actually paid in and applied for the purpose of its incorporation.

ELECTRIC LIGHT COMPANIES.

Section 12. **An electric company** may issue bonds for an amount not exceeding its capital stock paid in and to bear interest not exceeding 6% per annum, which may be secured by mortgage and franchise on all the property of the company.

Chapter 121, General Statutes. **A gas company** shall not transfer its franchise, lease its works or contract with any person, association or corporation to carry on its works without the authority of the general court.

Section 14. **Gas company may furnish electricity.**—The board of gas and electric light commissioners, upon application by any gas or light company, may authorize said company to engage in the business of generating and furnishing electricity for light or power and the gas company may engage

in such business in the territory or such part thereof as the board may designate in which it is authorized to supply gas.

Section 17. Gas companies cannot, except upon the purchase or lease of property and plant of an electric company, erect and maintain poles, wires, etc., through, in or over the streets until the mayor and aldermen of the city or selectmen of the town shall consent thereto in writing.

Section 20. Gas companies, respecting electric business, shall be subject to the control of the board of gas and electric commissioners.

Section 22. Gas companies may purchase or lease or use the property, licenses, rights and privileges of any electric light company, which is engaged in a business of furnishing electric light and power in the same location in which the gas company is authorized to furnish gas.

Section 23. **Electric companies may furnish gas.**—The provisions of the preceding sections, which are applicable to gas companies, authorizing gas companies to generate and furnish electricity, shall also apply to electric light and power companies.

Section 25. A gas company or other companies furnishing gas shall not dig up streets for laying gas pipes without the consent of the mayor, aldermen or selectmen.

Section 26. **Only one company to furnish electricity in a city or town.**—In a city or town in which a company or corporation is engaged in the manufacture or sale of electric light, no other firm or corporation shall lay, erect, maintain or use over and under the streets or highways poles or wires for the same purpose without the consent of the mayor, aldermen or selectmen of the town.

Section 27. Any corporation, company or person grieved by the decision of the mayor and aldermen of the city or selectmen of a town, may appeal therefrom to the board of gas and electric light commissioners.

WATER.

Act of 1903, page 486. The mayor and aldermen of a city and the selectmen of a town may upon terms and conditions prescribed, authorize persons or corporations to lay pipes and conduits for the conveyance of water under any public

way in such city or town, provided that nothing in the act shall authorize persons or corporations to supply water to persons or corporations other than themselves in any city or town in which a municipal plant is established except with the consent of the board or authority having charge of said water plant in such city or town.

STREET RAILWAYS.

Chapter 112, Rev. Laws, Section 7. The board and aldermen of a city or the selectmen of a town upon the petition of the board of directors of a company organized under the general laws or by special act for an original location of tracks in a city or town shall give fourteen days' notice of the time and place of the hearing of such petition duly published as is provided in the Statutes, and if, after hearing, they are of opinion that public necessity and convenience require it, they shall grant said location or any part thereof and shall prescribe how its works shall be laid and the kind of rails, poles, wires and other material to be used and impose such general provisions as public interest may require. It must be accepted by the company within thirty days thereafter. Not less than ten owners of real estate abutting on the public way in which such location is made or a majority in value of such owners may in fifteen days file a written petition with the board of railway commissioners, in which case the location in such way shall not be valid until approved by said board after public notice and a hearing.

All locations which were granted or in use before October 1, 1898, are ratified and confirmed, as if they had been accepted under the provisions of this section, approved for ratification as provided in Section 22.

Section 9. **Street railway** companies heretofore or hereafter organized in this commonwealth having first obtained approval of the aldermen of the city or selectmen of a town in which private land is situated, may for the purpose of avoiding grades and crossings in a public street or way as the board of railway commissioners may approve, construct and maintain parts of railway and extensions upon such private land outside of the limits of such private way.

Section 11. A street railway by consent of the board of

railway commissioners may construct and operate a road on streets or highways connecting two towns.

Section 29. Cannot construct upon private property except in certain cases.—Except for the purpose of reaching its car barns or repair shops and for reaching and providing convenient turnouts in parks and pleasure resorts upon the line of its railway, a street railway company shall not, unless authorized by special act of a general court, construct or operate any part of its railway outside of a public highway, street or bridge, but a street railway which prior to June 14, 1901, constructed any part of its railway upon private land with owners' consent and upon leased land or purchased land, may construct, maintain and operate its railway upon same.

Section 33. Location of street railway may be revoked.—The board of aldermen of a city or selectmen of a town, subject to the approval of the railroad commissioners, after the expiration of one year from the opening for use of the street railway in the city or town, if public necessity and convenience require, revoke the location of the street railway in any highway or street and the railroad shall be removed therefrom.

Section 78. May run cars over tracks of another road.—A street railway shall not run its cars over and use the tracks of another street railway company until the authority therefor has been approved by the board of railway commissioners after a hearing of all persons in interest.

Section 85. No street railway shall lease or contract for the operation of its street railway for a period of more than ninety-nine years without the consent of the general court.

Section 86. A street railway may sell and convey its franchise and property to another street railway company whose railway connects, intersects or forms a continuous line with its own, if the facilities for travel on the railway of each of the said companies shall not be thereby diminished or the rates of fare increased and such other corporation may purchase or consolidate with it.

Section 89. And they may contract that their company shall perform all the transportation upon and over the railway of the other or such company may lease its franchises, property and railway.

CITIES AND TOWNS.

Rev. L., 1902, page 377, Section 52. The selectmen of a town may authorize private electric light lines.

Section 54. **Electric lines on public ways.**—The selectmen of a town may authorize the erection of lines for the transmission of electricity for light, heat and power and for any purpose except street railways and place poles, wires, structures and other appliances in and under public ways or places.

Chapter 34, General Laws, Section 1. A city or town may construct, purchase or lease and maintain electric or gas plants for municipal use.

Section 2. Cities and towns shall not acquire such plant until authorized by a vote of two-thirds of each branch of city council in each of two consecutive years.

Section 3. Cities and towns shall not acquire such plant until it has been authorized by a vote of two-thirds of all the voters of the cities or towns.

Act of April 17, 1903, 214. Amends Section 10 of Chapter 34 of Revised Laws, as follows:

If owner of established plant desires to sell, city must purchase it under certain conditions.—If, when a city or town votes to establish a municipal lighting plant, any person or corporation engaged at the time of the first vote, required by Sections 2 and 3 of the charter, in the business of generating or distributing gas or electricity for sale for lighting purposes, etc., in such city or town, shall elect to sell their plant, the city shall purchase the plant and property within the limits of the city or town as is suitable for and is used in connection for such business.

Such purchase shall be required to include both gas and electric plants, if a single corporation operates both plants. The city must purchase the whole if the main gas works or central station is in the city or town limits, at its fair market value.

Section 11. If the city or town purchases a gas or electric plant having mains, poles and wires in an adjoining city or town in which there is no private gas or electric lighting plant, it may also purchase said mains, poles and wires or other distributing apparatus therein.

Section 14. If the city or town purchases the plant having mains, poles, wires and distributing apparatus in another adjoining city or town it may thereafter distribute gas or electricity to said city or town or to its inhabitants and shall thereafter have therein the same rights and franchises and be subject to the limitations and obligations as the persons or corporations from whom such outlying plant was purchased would have had or to which he or it would have been subject had such purchase not been made. If the adjoining city or town shall itself establish a gas and electric plant, it shall, under the provisions of Section 10-11-12, purchase the plant with its limitations owned by the city or town.

Section 18. A city or town which acquires a plant for the distribution, but not for the manufacture of gas or electricity for lighting purposes, may purchase gas or electricity from the adjoining city or town or from the corporation manufacturing it.

Chapter 25, Section 31. The town, by its selectmen, ratified by a majority of its voters, may vote thereon, for the purpose of supplying water to its inhabitants, purchase of any municipality or other corporation the right to take water from its source of supply or from its pipes, or purchase its whole water rights, estates, franchises and privileges.

Chapter 26, Section 5. Cities shall exercise the authority conveyed by Section 31, Chapter 25.

MICHIGAN.

Act April 23, 1903, page 64, Section 2. **Street railways and electric light companies may consolidate.**—Any corporation organized under Chapter 95, Howell's Annotated Statutes of Michigan, entitled Street Railways, and any company organized under Chapter 127 of said Statutes entitled Electric Light Companies, and any corporations organized under Chapter 126, entitled Gas Light Companies, or any two thereof may consolidate each with the others, and where such companies are organized, in operation, located and carry on business in the

same towns, cities or villages, may form a single corporation. The directors of the corporation may enter into an agreement for that purpose, prescribe the terms and conditions, and such agreements shall be approved by vote of three-fourths of the outstanding stock of each company. All the rights and franchises of each of the corporations so consolidated and their rights and interest in and to every species of property and things in action shall be deemed to be transferred to and vested in the new corporation without any deed or transfer.

The provisions of this act shall not apply to the counties of Marquette, Muskegon, Newaygo, Allegan, Jackson, Kalamazoo and Calhoun.

ELECTRIC LIGHT COMPANIES.

Act 1903, page 149. Act No. 70 of the Public Acts of 1881, entitled An Act for the formation of Electric Light Companies, being Sections 7132 to 7145 of compiled laws of 1897, are amended by the insertion of a new section 11a.

Section 11a. **Steam heating.**—Every corporation shall have power to produce, generate, furnish and sell steam for steam heating as the same may be desired in any city or town or village where such corporation carries on its business for the purpose of heating public and private buildings for hire, and shall have the power to construct and maintain conductors for conducting such steam heat through the streets, alleys, lanes and avenues of such city, town or village with the consent of such city, town or village and under such regulations as the municipal authorities thereof may prescribe.

Acts of June 18, 1903, page 368, Section 1. **Incorporation of companies.**—Three or more persons may incorporate for manufacturing and for the production and supply of gas and electricity for light and for other purposes. Existence of such corporation shall not exceed thirty years.

Section 14. Every such corporation has power to purchase, hold or convey such real and personal estate as the purposes of the corporation may require and may assess its capital stock in payment therefor.

The act of June 1, 1899, page 138, authorizes the incorporation of electric light companies for a period of thirty years, but undoubtedly is repealed by the act of June 18, 1903.

Electric wires in streets, etc.—Chapter 1891 of the compiled laws of 1897, relating to electric light companies, Section 10, gives electric light companies the power to lay, construct and maintain poles, wires and conductors for conducting electricity through the streets, alleys and lanes, with the consent of the municipal authorities.

No. 232 of the act of 1903 is silent upon this point.

WATER POWER COMPANIES.

Act of June 9, 1899, page 362. Water power companies have power to cause examinations and surveys to be made for the improvement of dams or digging and deepening channels. They may divert into any channel excavated or constructed under this act water from Lake Superior, St. Mary's River, and float lands belonging to said company, subject to the consent of the board of supervisors of the county in which waters diverted are situated, and may erect docks in Lake Superior or St. Mary's River.

STREET RAILWAYS.

Compiled Laws of 1897, page 2037, Section 6435. Any number of persons not less than three may form a corporation for street railway purposes. Its existence shall be not more than thirty years.

Section 6446. Upon the consent of the corporate authorities of any city or village or the township board of the township, street railways may use the streets and ways in any city or village and the highways of any township upon such terms and conditions to be agreed upon and accepted by the company; and the township, city or village cannot thereafter revoke such consent or deprive the company of the rights and privileges so conferred.

Section 6448. Street railway companies are authorized to purchase or hire any street railway in any city, village or township, together with the real estate, rights and privileges or franchises belonging to it, and purchase or take upon lease real estate, and may lease, dispose of, pledge or mortgage its property when the company deems its expedient to do so.

Note.—Cities, towns and villages may grant gas companies the right to lay conductors for either illuminating or fuel

gas through their streets, lanes and squares where the corporation is located and through which it may be necessary to pass to lay their pipe line for the distribution of oil, petroleum or gas, and may lay pipes through the roads of any township, village or city.

Electric fire alarm companies may construct and maintain lines of wire or other material for transmitting signals along, over, across or under any public places, streets or highways and across and under any waters in the state, with all necessary fixtures and erections therefor.

Water companies may introduce water into any town, city or village named in their articles of incorporation where the corporation is located, and may lay water pipes in and through streets, avenues, lanes, alleys and squares thereof and enter upon any lands as far as need be for these purposes and for the erection of the necessary plants, and may take water from any springs, rivers, fountains or streams and divert and conduct it to the city.

Where a municipal corporation grants to an electric light company, water company, street railway or other public utility an easement in its streets for the maintenance of poles and wires or for the laying of railway tracks, etc., without specifying the time of use, the grant is good for the corporate life of the grantee. 124 Michigan 43.

Unless provision is made by special law to the contrary, the life of a corporation under the constitution is thirty years.

MINNESOTA.

CONSTITUTION.

Article 4, Section 33. In all cases where the general law can be made applicable, no special law shall be enacted, and whether a general law could have been made applicable in any case it is declared a judicial question. The legislature shall pass no local or special law creating corporations, amending, renewing, extending or explaining their charters; or granting any special or exclusive immunity or franchise whatever.

Article 10, Section 2. Corporations shall not be formed under special acts.

CITIES.

GENERAL POWERS AND DUTIES OF COMMON COUNCIL.

Compiled Statutes 1894, page 286, Section 1085. They shall have the power to establish water works, erect lamps and provide for lighting the city and to control the erection of gas works or other works for lighting the streets.

Page 315, Section 1184. Councils have authority to contract with any person or corporation for lighting the streets.

Section 1185. Council may permit the laying of gas pipes in and through any and all streets, highways and public grounds.

Section 1186. Council may permit any person or corporation to lay mains and pipes in and through all streets, highways and public grounds for the city.

VILLAGES.

Compiled Statutes 1894, page 325, Section 1224. They may receive, purchase and hold for the use of the village any estate, real or personal, and sell, lease or dispose of same, and dispose of for any purpose or in any manner all surplus light, heat, steam, water or electricity which may be had or produced after providing for the streets and the furnishing of water for the use of the village and inhabitants.

They may erect lamp posts and provide for the lighting of the village and streets therein by gas and otherwise.

Section 1225. Villages have power to make, erect, establish, purchase, lease or control water works for the supply of water for public and private use, and owning machinery or making, generating and supplying light for public or private use, provided the consent of the people of the village is first had.

Section 1226. In all cases prior to 1891, where villages have adopted ordinances purporting to grant the right to any person or corporation for the maintenance of water works or gas works, and purporting to contract with said person or corporation for furnishing water or gas, and such person or corporation has expended money in the construction thereof and is now furnishing water and gas in pursuance of such

grant or agreement, the same shall be and the same are hereby legalized and confirmed.

VILLAGES OVER 3,000.

Section 1299. Council may direct and control the laying out of railroad tracks, bridges and switches in the streets and alleys. They may make and establish water works and provide for and control the erection of water works and grant the right to persons or corporations to erect water works and supply the village and inhabitants with water, with the right to lay water pipes and mains in and through the streets, alleys and public grounds.

They may provide for and control the erection of gas and electric light works or works of other means for lighting streets, and authorize the laying of mains, pipes, wires, etc., through, in and under the public streets, and the erection of poles and towers and erecting wires thereon, the village having the right of purchasing same after fifteen years.

§40, Section 1299. They shall regulate, control or prohibit the placing of poles for suspension of electric or other wires on or across any street and require those already placed or suspended to be removed and placed beneath the street and sidewalks, and compel the insulation of all electric light wires.

VILLAGES WITH LESS THAN 3,000.

Act of 1903, page 196. All villages with less than 3,000 inhabitants are empowered to grant to any person or corporation, for the purpose of connecting said village with other villages or cities or outside territory, the right to construct, maintain and operate street railways by other than steam power, for the transportation of passengers on any of the public streets of the village, for a period not exceeding twenty-five years; and such right shall not be exclusive; and the act also provides that all franchises theretofore passed are legalized.

It seems to be the policy of the law in this state that franchises shall not be exclusive. The Legislature has not seen fit to place any limitation upon cities and villages as to length of time for which franchises shall be granted, excepting, possibly, the act of 1903, applicable to franchises of less than three thousand inhabitants, which limits the duration of the fran-

chise to a period of twenty-five years. We can find no decisions of the higher courts in this state touching the question as to the duration of a franchise, and as the Legislature has limited the duration of a corporation to fifty years, with the right of renewal for another fifty years, would indicate that the policy of the state was not to permit perpetual grants.

CORPORATIONS.

Compiled Statutes, Section 2592. Any number of persons, not less than five, may associate and become incorporated for the construction, maintenance and operation of any work or works of internal improvements, including companies for supplying the public with water, gas light, electric light, heat or power and railways, but no corporation shall have the right to construct, maintain and operate upon or within any street a railway of any kind or subway, pipe line or other conduit for supplying the public with water, gas light, electric light, heat or power, or for transportation without first obtaining the franchise therefor from such city or village. It shall be subject at all times to any conditions imposed by said city or village.

At the end of five years the city or village may purchase the plant when authorized by two-thirds vote of its electors.

Section 2596. **Duration of corporation.**—The duration of a corporation shall be fifty years, but may be renewed for a period not longer than fifty years.

WATER POWER COMPANIES.

Also see Act of 1895, page 140.

Compiled Statutes, Section 2618. **Location of, in streets, etc.**—Companies organized for the purpose of building canals for the creation of water power for manufacturing purposes may have the power to locate any part of said canal and occupy or cross any road, street, alley or public way or any part thereof upon the terms and conditions and in a manner which may be agreed upon between said corporation and public authorities of the county, town or village in which said road, street or alley is situated.

Section 2619. Such company has the right to overflow, dam or otherwise use, enjoy or damage by reason of any dam,

lake, sluice, water gate or other erection, all or any lands, rights, easements or other property.

WATER WORKS.

Section 2622. The water company may drain water from any river, lake or creek and may erect and construct canals, bulkheads, gates or other needed structures, and the power to take private property for that purpose.

STREET RAILWAYS.

Section 2642. **Use of streets, etc.**—If it becomes necessary in the erection of any street railway to occupy any road, street or alley, it shall be competent for the municipal corporation and the officers of the company to agree upon the manner, terms and conditions upon which the same may be used or occupied. If the company shall elect in the location of any part of its railways to cross, intersect or unite with any other railroad of another company before constructed, at any point in its route and upon the grounds of such other railroad it shall have the right to do so, subject, however, to the conditions set out in the act.

Act of 1897, page 75. **Cities of more than 50,000 inhabitants** are authorized to contract with any person or corporation for the purchase of electric power with which to operate the whole or any part of its public water works.

Act of 1901, page 277. **Authorizes cities of not less than 10,000 or more than 50,000 inhabitants** by a vote of two-thirds of all the members of its council to construct, erect and purchase an electric light plant to be operated by the city, and may issue bonds therefor not exceeding \$40,000.

Act 1903, page 204. **Cities with population of over 50,000**, and at the same time owning an electric or gas lighting system, shall be authorized to contract for the purchase of such electricity or gas for the purpose of operating such electric or gas plant owned by the city upon such terms as may be provided by a three-fourths vote of all the members of the governing body thereof. Such contract shall not be for a longer period than ten years. The obligation incurred in making

such contract shall not be considered a part of the indebtedness under the provisions of the governing charter.

Act of 1903, page 276. Above cities are authorized to contract, if such cities have no water system, for a term of thirty years, for furnishing water, and may contract for lighting for a period of fifteen years, if the city has no lighting plant of its own.

Act of 1901, pages 476-579. **Right of way of water power company.**—Corporations using water power for heat, light or power or for the purpose of generating, developing and using electricity for light, heat or power, are authorized to acquire the right of way over, through and across any lands for the erecting of posts, poles, wires, etc., and may acquire necessary grounds, shops and other buildings necessary to that end, and shall have and enjoy the right of eminent domain and take and condemn land, and also has the right to enjoy the use of the public roads for erecting poles and posts and stringing wires thereon.

Act of 1902. Cities may extend their lines, wires and fixtures of their plant to any incorporated village lying within three miles of the limits of said city, and make contracts in said village with the village and persons thereof for light and power.

MISSISSIPPI.

CONSTITUTION.

The Legislature shall pass general laws under which cities and towns may be chartered and their charters amended.

Article 7, Section 178. Corporations shall be formed under general laws for a period of not longer than ninety-nine years.

Section 192. Provisions shall be made by general laws whereby cities and towns may be authorized to and encourage the establishment of manufactories, gas works, water works and other enterprises of public utility other than railroads.

CITIES AND TOWNS.

Act of March 19, 1904, page 231. A city, town or village in which any individual, company or corporation has been or may be authorized by such city, town or village to supply water, electric light or gas, is empowered to prescribe maximum rates for furnishing same to such city, town or village, for the inhabitants therein, such rates to be just and reasonable.

Act of 1904, pages 65 and 67. Electric light companies are required to pay a privilege tax from twenty-five to seventy-five dollars and gas companies from thirty to one hundred dollars, according to population of the city, town or village.

For each street car company operating a line, on each mile or fraction thereof, twenty dollars. Water companies from fifty to two hundred and fifty dollars, according to the population of the city, town or village.

Code of 1892, page 686. Municipalities are divided into three sections—cities, towns and villages; 2,000 inhabitants are cities; less than 2,000 and not less than 500 are towns; less than 500 and not less than 100 are villages.

Code 1892, page 688. **Water works, etc.**—Municipalities have power to purchase water works, electric light plants and construct sewers.

Section 2931. **Street railways on streets.**—Mayor and board of aldermen have power to provide for and regulate the construction and passage of railways and street railroads through the streets, alleys, avenues and lanes, but the right so granted shall not be exclusive.

Section 309. **Supervisors may allow street railways to occupy county roads or highways.**

Section 2932. **Electric wires.**—They may grant the right for the erection of telegraph, electric light or telephone poles and posts and wires along and upon any of the streets, alleys and ways, but such right shall not be exclusive.

Section 2933. **Gas, water and steam pipes.**—They may grant the right to lay gas, water, sewer or steam pipes or conduits for electric light, but such rights cannot be granted for a longer period than twenty-five years.

Section 2948. **They may purchase, maintain and operate**

water works and regulate the same, and prescribe the rates at which water shall be supplied to the inhabitants, and may contract with any person for the location and maintenance of water works for a term not exceeding twenty-five years; and they may contract to purchase any water works; but such contract to purchase shall not be entered into until submitted to the vote of the people and approved by a majority thereof.

Section 2964. They may provide for the lighting of the streets, parks and public grounds, and the location of lamps and lamp posts.

This section pertains to cities and towns, but not villages.

CORPORATIONS.

Act of 1898, page 90. Section 832 of the Annotated Code of Mississippi was amended as follows: Corporations for every lawful purpose and of every kind, except for the construction and operation of railroads other than street railways and carrying on any insurance business, may be incorporated under Chapter 25 of the Code.

Section 833 of the Code declares the existence of corporations to be fifty years.

Section 845, Code of 1895, page 291. When judgment shall be rendered against any corporation all of its property, real or personal, and its franchises shall be liable to be seized and sold to the satisfaction thereof. Sales vest title to franchises in the purchaser. When sold under execution the franchise may be redeemed within six months.

The Legislature or constitution does not fix any limit for the duration of a franchise excepting as to gas, water and electric companies and the question as to the validity of a perpetual franchise has never been before the courts of this state.

MISSOURI.

CONSTITUTION.

Article 2, Section 15. No *ex post facto* law or law empowering the application of contracts or retrospective on its operation or making any irrevocable grant of special privileges and immunities can be passed by the General Assembly.

Article 4, Section 53. **No special law shall be passed incorporating cities, towns or villages or changing their charters, creating corporations and amending, renewing, extending or explaining the charter thereof or granting to any incorporation, association or individual the right to lay down railroad tracks.**

CORPORATIONS.

Article 12, Section 2, Constitution. No corporation after the adoption of this constitution shall be created by special laws or shall any existing charter be extended, changed or amended by special laws, except those for charitable, penal or reformatory purposes, which are under the patronage and control of the state.

Section 20, Article 12, Constitution. **Consent for use of highways by street railways, and transferring franchise.**—No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town or village, or in any public highway without first acquiring the consent of the local authorities having control of the same or highway proposed to be occupied by such street railroad, and the franchise so granted shall not be transferred without similar assent first obtained.

Laws of Missouri, Act of March 19, 1901, Section 1. **Electric wires on highways, etc.**—No person or persons, association, companies or corporations shall erect poles for the suspension of electric light wires or laying and maintaining pipes, conductors, mains and conduits for any purpose whatever, either on, under or across the public roads or highways of any county of this state without first having obtained the assent of the county court of such county therefor, and no such poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained so as to in any manner interfere with the ordinary traffic and public use of such road and highway.

Section 2. The fact that in certain counties of this state poles for suspension of electric light wires, and pipes, conductors, mains and conduits are being laid, erected and maintained on the public roads and highways without the consent of the several county courts of such counties, and the fact that doubt exists of the power of such county courts in the premises

creates an emergency, therefore this act shall take effect and have force from and after its passage.

Section 1341, Revised Statutes of Missouri, 1899. **Electric, gas and water companies, right to use streets.**—Any corporation for the purpose of supplying any town, city or village with gas, electricity or water shall have full power to manufacture and sell and furnish such quantities of gas, electricity or water as may be required in the city, town or village, district or neighborhood where located for public or private buildings or for other purposes, and such corporation shall have the power to lay conductors for laying gas, electricity or water through the streets, lanes, alleys and squares of any city, town or village, with the consent of the municipal authorities thereof and under such reasonable regulation as said authorities may prescribe.

Section 1342. **Water company, use of streets.**—The municipal authorities of any city, town or village in which any water company shall be organized may contract with any such company for the purpose of supplying water in streets, lanes, alleys and public places in such city, town and village for any length of time which shall be agreed upon between said city, town or village and such company for a term not to exceed twenty years, after being ratified by two-thirds majority of the qualified voters of the district.

Section 1343. **Water companies, use of streams and laying pipes.**—Any corporation, company or individual proposing to supply with water any city, town or village shall have the right to take water from any stream that is not navigable and to locate a dam thereon and to lay pipes for the conveyance of water in, over and through any lands situated between the source of water supply and the point of delivery of said water and to acquire by condemnation sufficient lands upon which to build works for the pumping, storage, distribution and management of water upon complying with the proceedings as is provided by law.

The term of existence of such corporation shall not exceed fifty years.

STREET RAILROADS.

Section 1181. Any company owning, leasing, operating or controlling a bridge connecting any city, town or village with any city, town or village of an adjoining state may lease, own, construct and operate a street railway over such bridge and in such cities, towns or villages and in the counties in which same may be situate and in adjoining counties.

Section 1187. **Street railways** have power to construct or maintain and operate its railroad along, across or over the streets of any incorporated city or town or the roads of any county, provided the consent thereto of the municipal authorities of said city or town or the county court of such county is first obtained. Provided, the municipal authorities of cities and towns shall not grant the right of way over, along or across any street, except upon the petition of the owners of the land representing more than one-half over each of the streets, or so much thereof as is sought to be used for street car purposes, and when the street or part thereof that is sought to be used shall be more than one mile in extent no petition of land owners shall be valid unless the same shall be signed by the owners of land representing more than one-half the frontage of each mile or the fraction of a mile, if any, in excess of the whole mile, measuring from the initial point named in such petition, such street or part thereof sought to be used for such purpose. Such street railway may be operated by animal, cable, electric or motive power, as is consented to, and the use of which said power may be obtained from the public authorities of such city, town or county.

CITIES OF THE FIRST CLASS.

Section 5438. The municipal authority of such city shall have power by ordinance to determine all questions and rights with reference to street railroads in the corporate limits of such city, whether such question may involve the construction of such street railroads, granting the right of way or regulating and controlling of same after their completion, and also shall have the power to sell the franchise or right of way for such street railroad to the highest bidder, or as a construction thereof, to impose per capita tax upon the passengers

transported or an annual tax upon the gross receipts of such railroad or on each car, and no such railroad shall be incorporated or built in such city except according to the above and other conditions in this article and in such manner and to such extent as may be provided by ordinance.

CITIES SECOND CLASS.

Section 5508, §36. Council has power to regulate and control the use of all rights, franchises and privileges granted by it.

Section 42. To have the sole authority to grant the right between person or persons, corporations or company to make and construct street railroads in all streets in said cities and to regulate and control the use thereof in the manner hereinafter provided.

Section 14. To provide for the lighting of the streets, parks, public places and city buildings within and of the city, and for the locating of all lamp posts and other fixtures necessary therefor, and to regulate by ordinance the price, quality and lighting power of each lamp or light furnished to the city or to the inhabitants thereof by a corporation, person or persons.

Section 5845. **Use of streets.**—That the council may in its discretion grant the right to any person or persons or corporation to locate such works and lay the pipe, wires and locate the posts, poles and other necessary apparatus and appliances therefor upon such terms as may be prescribed by ordinance; provided further that such right to any such person, persons or corporation shall not extend for a longer period than twenty years and shall not be granted or renewed unless by consent of a majority of the qualified voters of the city voting at an election held for such purpose.

Section 5846. **Poles, wires, pipe, etc., on streets.**—Provided that the council may in its discretion grant the right to any person, persons or corporation to erect, maintain and operate water works and lay pipes and erect poles, telegraph, telephone and other electric wires under or above ground, as may be necessary for the efficient operation of said works upon such terms as the council may by ordinance prescribe. Provided further that in no case shall such right extend for a longer period than twenty years and shall not be granted or renewed

unless by the consent of a majority of the qualified voters of the city voting at an election held for that purpose. Provided that nothing in this and the preceding section shall be so construed as to prevent city councils from contracting with any persons, association or corporations for supplying fire hydrants and pipe foundations, and to furnish the city with gas or electric lights in cities where franchises have already been granted and where water works and electric plants already exist without the vote of the people.

CITIES OF THE FOURTH CLASS.

Section 5966. Location of pipes and wires, and duration thereof.—That persons or corporation may locate such works and lay pipes, wires and locate posts, wires, poles and other necessary apparatus and appliances therefor upon such terms as may be prescribed by ordinance; provided further that such rights to any person, persons or corporation shall not extend for a longer time than twenty years, and shall not be granted or renewed unless by the consent of a majority of the qualified voters of the city voting at an election held for that purpose.

Provided that the board of aldermen may in its discretion grant the right to any person, persons or corporations to locate, maintain and operate water works and lay pipes, erect poles and telegraph, and telephone exchanges with other cities and towns and other electric wires under or above ground as may be necessary for the efficient operation of said works upon such terms as the board of aldermen may prescribe by ordinance. Provided, further, that in no case shall such right extend for a longer period than twenty years and shall not be granted nor renewed unless by the consent of a majority of the qualified voters of the city voting at an election held for that purpose.

Section 6116. Cities and towns generally as to franchises.—Before granting any franchise for constructing and operating any elevated, underground or other street railroad along, over or under any street or alley of any incorporated town or city the authorities of such town or city shall by ordinance duly establish a route and clearly define the terms and conditions of such franchise and locate all depots, stations, turnouts and switches of such railroad. The party to which said fran-

chise may be granted shall be an incorporated company organized under the laws of this state to construct, maintain and operate street railroad in the town or city by which such franchise is granted. Before taking or damaging any property in the construction of a railroad under such franchise the said corporation shall cause to be ascertained and determined the damages that will be done by the building and operation of such railroad to the real and personal property situated on the route fixed by ordinance defining such franchise and shall pay to the owner or owners of the real estate and personal property so affected or go into court for that amount for their respective damages.

Section 6119. The municipal assembly, city council or board of trustees of any incorporated city in this state shall have no power to grant the use of or the right to lay down any tracks in any street of the city to any railroad company or to any steam, dummy, electric, cable, horse or other street car company whether the same shall be incorporated under any general or special law of the state now or hereafter in force except upon the petition of the owners of the land representing more than one-half of the frontage of the street or so much thereof as is sought to be used for railroad or street car purposes; and when the street or part thereof as is sought to be used shall be more than one mile in extent no petition of land owners shall be valid unless the same shall be signed by the owners of the land representing more than one-half of the frontage of each mile and of a fraction of a mile, if any, in excess of the whole mile, measuring from the initial point named in such petition; and such street or part thereof sought to be used for such purpose. Provided that this section shall not be construed to prevent granting authority to a railroad company to lay a spur track to any manufacturing establishment or wholesale house. Provided, however, that nothing in this section shall be construed so as to prohibit the municipal assembly, city council or board of trustees of any such city from granting a renewal of any franchise now in force to the extent of the present mileage granted for such franchise.

Act 1901, page 133. **When more than two tracks in a highway.**—The county court of any county of this state, or

municipal authorities of any incorporated city or town which now has a population of 50,000 inhabitants or more, and adjoining a city which now has or may hereafter have a population of 300,000 inhabitants or more shall have the power and authority, when petitioned by a majority of the owners of the land representing more than one-half of the frontage along any public street of this state upon which is now constructed or may hereafter be constructed more than two railroad tracks, stating in such petition that said public road or street has more than two tracks constructed thereon and that the same is rendered impracticable by reason thereof, the court may compel said railroad company or companies, or any one of said companies, to take and remove its said track or tracks so as not to leave more than two tracks on said road or street, first giving such railroad company or companies ten days' notice of the time of filing said petition.

Section 2. Any street railroad company which is or may be hereafter authorized by the county court or the municipal authorities of any incorporated city or town to operate a line of street railroad cars along, across or upon any public roads or streets upon and across which any other street railroad company owns a street railroad may be compelled by said county court or the municipal authorities of any incorporated city or town to permit and authorize said company whose tracks have been ordered removed to operate and run its cars over the tracks of said other company upon the payment of just compensation to said other company, to be ascertained under the rules and regulations hereafter prescribed.

MONTANA.

Article 3, Section 15. **The use of all water not appropriated or that may be hereafter appropriated for sale, rental, distribution or other beneficial use and the right of way over the land of others over ditches, drains, canals and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for the collecting and storing the same, be held for the public use.**

Article 5, Section 26. **Special laws** shall not be passed granting to any corporation, association or individual the right to lay down railroad tracks or any special privilege or franchise whatever.

Article 15, Section 2. **No charter of incorporation** shall be granted, extended, changed or amended by special law, except for municipal purposes, etc., but the legislature shall provide by general law for the organization of corporations hereafter created.

Article 15, Section 12. **No street or other railroad** shall be constructed within any city or town without the consent of the local authorities for the control of the street or highway proposed to be occupied for such street or railroad.

Section 17. **Leasing and alienating property.**—The legislative assembly shall not pass any law permitting the leasing or alienation so as to release or relieve the purchaser of property held thereunder from any liabilities of the lessor or lessee or grantor or grantee, contracted or incurred in the operation, use or enjoyment of such franchise or its privileges.

Act of May 5, 1903, page 158. **Vote upon franchise.**—No franchise for any purpose whatever shall be granted by any city or town or by the mayor or city council to any person, or persons, association or corporation without first submitting application therefor to the resident freeholders whose names shall appear on the city or county tax roll preceding such election.

Section 2. **Election.**—Notice of such election must be published at least in one daily newspaper, if there is one, if not, in some weekly newspaper, once a week for three weeks, and the time and place of holding the election. If the majority of the votes cast at the election be for granting the franchise, the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

CITIES AND TOWNS.

Act of March 8, 1897, page 203. Cities and towns have the right to provide for lighting and cleaning the streets and to regulate and control the laying of railroad tracks and prohibit the use of engines and locomotives propelled by steam or otherwise, and to license and authorize the construction and

operation of street railroads and to require them to conform to the grade of the street as the same may be established.

Section 64. They may contract indebtedness for water works and lighting plants, and whenever the franchise has been granted or contract made with any person or corporation and they have established and maintained a system of water supply or have valuable water rights or a supply of water desired by a city or town, the city or town has the right to purchase said plant.

Section 66. They may have the right of way through the streets, avenues and other property of the city or town for the purpose of street or other railroads and regulate the management of same.

Section 63. They may permit the use of the streets and alleys of any city or town for the purpose of laying down the gas, water or other mains.

Act of March 6, 1897, page 202. Each gas and electric company doing business in cities and towns of more than 10,000 inhabitants shall pay a license of \$200 per year; in a town of 5,000 or less than 10,000 \$100 per year; in a city or town between 1,500 and 5,000 \$50 per year.

Street railways in towns of 4,000 and over, \$50 a quarter; and in all towns with less than 4,000, \$25 a quarter.

Water companies in cities and towns of over 10,000 shall pay a license of \$400 per year; and in cities and towns between 5,000 and 10,000, \$200 per year; and in cities and towns between 1,500 and 5,000, \$100 per year; and in towns of less than 1,500, \$50 per year.

Code of 1895, page 424. City council may provide for laying streets and constructing water works.

Page 429. They may permit the use of streets and alleys for the purpose of laying down gas, water and other mains, and may procure a water supply for the city or town by the purchase of a water plant of another person furnishing water to a city or town, in the manner provided by statute.

CORPORATIONS.

The term of existence of a corporation is twenty years.

NEBRASKA.

CONSTITUTION.

Article 3, Section 15. **No special law** shall be passed incorporating cities, towns or villages or granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose, or granting to any corporation, association or individual any special privilege, immunity or franchise.

All other cases where the general law can be made applicable, no special law shall be enacted.

Article 11 "B," Section 1. **No corporation** shall be incorporated by special law or its charter extended, changed or amended, except those of charitable, penal or reformatory purposes, but the legislature shall provide by general laws for the organization of all corporations hereafter to be created.

All general laws pursuant to this section may be altered from time to time or repealed.

Section 2. **No general law** shall be passed by the legislature granting the right to construct and operate a street railway within any city, town or incorporated village without first requiring the consent of a majority of the electors thereof.

Majority of all votes cast at an election necessary. *State vs. Bechel*, 22 Neb. 161.

METROPOLITAN CITIES.

Compiled Statutes 1903, page 192, Section 845. Cities of population of 80,000 or more are of the metropolitan class.

Section 863, page 196. **Franchise, grant of upon approval of electors, and charge for.**—No new franchise shall be granted nor any extension of a franchise heretofore granted be lawful, unless an annuity to the city be provided, based upon a fixed reasonable amount per year or a percentage of the gross earnings, nor until the proposition for same has been submitted to the vote of the electors of the city at the general city election, or a special city election, and it has been approved by a majority of the electors voting.

Section 869. **Streets, control and excavation of.**—The

mayor and council shall have the right to control and direct all work upon the public streets and adopt any reasonable regulations relating to excavations in the streets, alleys and public grounds by any party, including water works, gas and all franchised corporations.

Section 873. **Eminent domain.**—Cities of the metropolitan class have the right of eminent domain for the purpose of establishing gas works, water works, and electric light plants.

Section 957, §3. Council have power to compel water companies, gas companies or other persons, firms or corporations owning or controlling any pipe or other underground conduit or other appliances to provide for and construct all connections that may be deemed necessary for the future to the curb or property lines in all streets and alleys to be paved, repaired or otherwise improved.

Section 994, page 241. **Fixing price, gas and electric light.**—The mayor and council of such cities have power to regulate and provide for the lighting of streets, laying down gas, water and other pipes and erection of lamp posts, electric towers and other apparatus and regulate the sale and use of gas, electric light, fix and determine the price of gas and electric light and power and prohibit and regulate the erection of electric wires, poles, etc., and require them to be put underground, and also require street railways to pave or repair between rails.

Section 989. **Regulate laying of track.**—The mayor and council shall have power to provide for and regulate the laying of tracks and the passage of steam, cable, horse or other railways through the streets, alleys and public grounds of the city.

Section 998, page 242. The mayor and council have power to erect, construct, purchase and operate subways or conduits, water works, gas works and electric light plants within the corporate limits, and contract with others for that purpose.

CITIES OF THE FIRST CLASS.

Act of March 30, 1903, page 131, General Statutes, 1274. All cities of less than 40,000 and more than 25,000 inhabitants are cities of the first class.

Section 1395, § 124. **No contract** of any kind shall be

entered into by said council for a period exceeding one year, unless the proposed contract, ordinance or resolution in connection with the contract shall have been published for two weeks in some newspaper of general circulation in said city, and if no remonstrance is filed against the city entering into such contract and the passage of the ordinance and resolution connected therewith, signed by at least 5 per cent of the legal voters, the council shall be at liberty to enter into said contract for a period not exceeding ten years. But should a remonstrance be filed signed by 5 per cent of the legal voters, said contract shall not be entered into, unless the majority of the legal voters vote in favor of same.

Section 128, §5. Act of April 6, 1903, page 131. **Paving.**—All horse, cable, steam, electric or other railway companies shall pave, at their own cost, the space between the rails of its tracks, not only the main tracks, but also the side tracks, crossings and turnouts and keep the same in good and proper repair.

The city may levy a tax on tracks, etc., for paying the cost of paving, which shall be a lien ahead of any mortgage, conveyance, etc., under certain conditions set out in the act.

Section 1424. **Pipes and conduits laid to curb.**—The city may compel gas pipes and underground conduits to be constructed to the curbs or property lines in all streets and alleys to be paved or otherwise improved.

Section 1466. **Laying of tracks.**—Cities of this class have power to regulate and provide for the laying of tracks and the passage of steam, cable, horse and other railways through the streets, alleys and public grounds of the city.

Section 1469. **Grant franchises.**—They shall have the right to regulate and provide for the lighting of streets, laying of gas, water and other pipes, and for the erection of lamp posts, electric light towers and setting of poles; and they may grant franchises in streets, alleys and public grounds to any persons or corporations for the operation or business of a similar character.

No franchise of any kind shall be granted or extended until the proposed ordinances granting the same shall have been published two weeks, when, if no remonstrance is filed against its passage and the granting or extending of such franchise

by at least 5 per cent of the legal voters, the said city or council shall be at liberty to grant such franchise for a period not exceeding ten years; but should such remonstrance be filed, then the franchise shall not be granted or extended unless a majority of the legal voters shall assent thereto.

Section 1470. **City may own works.**—The city has power to erect, construct and purchase, maintain and operate subways or conduits, water works, gas works, and electric light plants within its corporate limits, and they shall have power to fix, charge and collect a rental or compensation for the use of subways or conduits or of water, gas or electricity furnished consumers and shall have power to contract with any competent party for the supply or furnishing of water, gas and electric light or electric power.

Act of April 7, 1903, page 261. **Any city of first and second class and any village in the state** shall have the power to establish and authorize a heating or lighting system.

CITIES OF THE FIRST CLASS OVER 40,000 INHABITANTS AND MORE.

General Statutes 271. Cities of first class with a population of more than 40,000 and less than 100,000 shall be known as cities of first class.

General Statutes 298. **Street railways** shall be required to pave and repair between and one foot beyond their outer rails.

Pages 302-303. **Water works.**—This class of cities may construct water works and sewers, and procure others to construct and maintain a system of water works for any time not exceeding twenty years with the right of the city to purchase same after a lapse of ten years from the date of the contract.

Before a city can construct a plant it must be authorized by the electors.

Page 304. **Railways in streets, and lighting plant.**—Council have power to purchase or construct a lighting plant, but it must be first authorized by a vote of the electors, and the city has the right to regulate the passing of railways through the streets and public grounds of the city, reserving the rights of all persons injured thereby.

Page 311. **Regulation of sale of gas and electricity and**

erecting gas pipes and pole lines.—The mayor and council have the right to regulate and provide for lighting streets and laying down gas, water and other pipes and the erection of lamp posts and electric light towers, and regulate the sale and use of gas and electric lights and the erection of telephone, telegraph or electric wires and poles.

Page 313. **Lights for streets and alleys.**—They may make contracts with or authorize any person, company or association to erect gas, water or other light works in said city and give such person, company or association the privilege of furnishing light for streets and alleys of said city for any length of time not exceeding one year, or for five years upon the vote of the electors of the city.

**CITIES OF FIRST CLASS WITH MORE THAN 5,000
AND LESS THAN 25,000 INHABITANTS.**

Section 401. **Railways on streets.**—Cities of this class may provide for and regulate the passage of railways through the streets and public grounds of the city.

General Statutes 412. **Railways on paved streets.**—Street railway and other railway companies shall not enter upon or occupy any paved street or alley within five years after said paving shall have been completed until they shall pay into the city treasury the original cost of paving between and one foot beyond the outer rails of its tracks.

Page 415. **Eminent domain.**—This class of cities may exercise the right of eminent domain as to heating plants, power plants, gas works, electric works, water works, or market places.

Page 417. **City may contract with persons to furnish water and light for twenty years and condemn and appropriate their works for the city.**—Mayor and council have power to make contracts with and authorize any person, company or association to erect gas works, power plants, electric light works, heating plants or other works in such city and give such person, company or association the privilege of furnishing water, light and power for a period not exceeding twenty years, and they may purchase or provide for, establish, construct and operate and regulate for the city any such water works, gas

plant, power plant, electric or other works, or condemn or appropriate same for the city.

Page 418. **City may regulate and fix rates of water, power and electricity.**—The mayor and council have power to require of any individual or private corporation operating such works, subject to reasonable rules, to furnish any person applying therefore on the lines of its pipes, mains, wires, etc., with gas, water, light or heat and shall regulate and fix the rating or rents or rates of water, power, gas, electric light or heat.

Page 420. The city may, under conditions provided in the act, contract with and procure individuals or corporations to construct and maintain a system of water works, power plants, heating or lighting in such city for not exceeding twenty years from date of contract, with the right of the city to purchase same at any time after a lapse of ten years from the date of contract.

Street railways are required to pave between and one foot beyond their outer rails and keep it in repair.

CITIES OF SECOND CLASS AND FRANCHISES.

Cities with more than 1,000 and less than 2,500 are cities of the second class.

General Statutes, page 445. Cities of the second class shall have the right to provide the city with water and regulate the lighting of the streets.

Page 462. **Rights to erect light works in cities, and contract for six years.**—Cities of second class are authorized to make contracts with and authorize any person or corporation to erect gas and electric light works and give such person, company or association the exclusive privilege of furnishing gas or electricity to light the streets and alleys of said city or village for any length of time not exceeding six years.

Page 462. **Water works and contracts for water.**—They may contract with and authorize any person, company or corporation to erect, maintain and operate a system of water works and water supply, and give the exclusive privilege therefor for a term not exceeding twenty-five years, and lay down in the streets of said city or village water mains and sup-

ply pipes and they may provide for the purchase of water works.

Page 498. Cities of the second class and any village in this state are authorized to establish and maintain a heating or lighting system for such city or village.

ELECTRIC LIGHT COMPANIES.

Act of April 2, 1903, 608. That all persons, associations or corporations engaged in generating and transmitting of electric current for sale in this state for power or other purposes are granted the right of way for all necessary poles and wires within and across any of the public highways of this state, provided all such persons or corporations shall be liable for all damages to private property by reason of the use of the public highway for said purpose, and all wires shall be placed at least twenty feet above all road crossings, and when they seek to carry one or more wires over and across a railroad track or telegraph wires or right of way of any railroad company where the same intersects or crosses streets, highways and alleys and other public thoroughfares, said person or corporation shall first endeavor to agree by a contract as to the manner and kind of crossing, which shall not be less than twenty-seven feet above the top of the rails of the railroad track, and if no such agreement can be had with any such railroad, then the same may be ascertained and determined by commissioners to be selected as is provided in Section 97, Chapters 1 and 7, relating to the condemnation of the rights of way for railroad purposes; and if such wires are constructed or poles erected over railroad tracks, telegraph wires or right of way of any railroad company without first having complied with this act, such person or corporation upon conviction thereof shall be punished by a fine not exceeding \$500, and providing further that nothing herein contained shall be construed to grant any right within the corporate limits of any village or city of the first and second class.

CORPORATIONS.

Electors must vote in favor of use of highways by a street railway.—Compiled Statutes, 1903, page 1167. Any number of

persons may associate and incorporate under the general laws for constructing and operating a street railway in any city upon the consent of a majority of the electors therein. The articles of incorporation must fix the termini of the street railway which the company proposes to construct and describe the precise route between such termini and also name the streets through which said railway is to be constructed and state the length of the railway, which shall not be authorized or consented to by the electors of any such city at any one election to exceed the length of five miles.

Section 4714. The question of the consent of a majority of the electors of any such city to the constructing and operating of any such street railroad shall be determined by submitting the question to the electors of such city at an election to be held for that purpose, and provided that no franchise to construct a street railway shall be granted nor shall any election be held to vote upon the proposition unless there shall have been filed at least ten days before such election a map or plat showing the route and location of the proposed street railway in the county office wherein are kept the records of deeds of real estate.

Act of 1893, Section 4715. If a majority of the votes cast at such election shall be in favor of the constructing and operating such proposed street railroad, the council shall cause the city clerk to make out a certificate of the result and deliver the same to the chief officer of such street railway, who shall cause the same to be recorded in the office of the county clerk where the articles of association of such street railroad company are recorded, but no street railway shall be constructed or consent or authority therefor be given upon or along any part of any street in any city upon or along which any street railway has already been constructed.

The other railway is authorized, however, to consent to the use of any part of its railway by the other company. The consent of the electors shall not be operative, unless the owners of a majority of the feet front of the real property abutting on the street or streets upon which it is proposed to construct such street railway shall in writing consent thereto

and filed in the office of the city clerk wherein such street is situate before any election to give the consent of the electors shall be called.

NEVADA.

CONSTITUTION.

Article 8, Section 1. **Special laws.**—The legislature shall pass no special law relating to corporate powers except for municipal purposes; but corporations may be formed under general laws and such laws may from time to time be repealed.

Section 8. The legislature shall provide for the organization of cities and towns by general laws.

Article 15, Section 4. **No perpetuity** shall be allowed except for eleemosynary purposes.

Act of March 2, 1901, page 35. **Franchise for electric wires, etc., and term of.**—Under this act, the right is granted any person incorporated under the laws of this state or under the laws of any other state, but doing business in this state, and after complying with the laws of this state regarding foreign corporations to supply electric light, heat and power to the inhabitants of the counties, cities and towns of this state and for that purpose shall have the right to construct and maintain poles and wires in the county roads and highways and in the streets of the cities, counties and towns of this state, but the franchise and privilege granted by the act shall continue only for a period of twenty-five years from and after filing of notice by the person or corporation, that they will supply such electric light, heat and power, which notice shall be filed in the office of the county recorder of the county in which such person or corporation intends to supply such electricity, accompanied by an agreement on behalf of such corporation that he or it will pay annually to such city or town 2% of the net profits.

The act also provides that such person or corporation shall

commence the construction of their plant within three months after filing said notice.

Act of March 9, 1903, 64. Electric light and water companies are compelled to run wires or water pipes in buildings within 500 feet of their mains.

STREET RAILWAYS.

Act of March 19, 1901, 79. **Franchises to street railways for use of highways.**—The county commissioners, town trustees and aldermen, supervisors or other authorities directly entrusted with the management of the affairs of any town or city in this state shall sell to the highest responsible bidder, any street railway franchise through and over any streets of such town or cities.

They shall advertise the proposed franchise, offering the same for sale to the highest bidder for not less than ninety days. The franchise must appear in full in the advertisement and no franchise shall be given which has not been specially and fully described in the advertisement.

Every purchaser of a franchise shall keep in repair that portion of the street between the rails and two feet outside of said track on each side thereof and no franchise shall be given under this act for a longer period than twenty years.

Compiled Laws of Nevada, 1900, page 194, Section 902. **Franchises for gas pipes.**—Any persons or company desiring to supply the inhabitants of any city or town in the state with illuminating gas, shall have the license and authority to locate within the limits of such city or town the necessary buildings, works and machinery for the manufacture of such gas and make the necessary excavations in the public streets of said city or town for the purpose of laying gas pipes therein and may have the right to lay all necessary pipes and re-open such excavations in said streets.

Compiled Laws, 1900, page 474. **Lighting streets.**—The county commissioners shall provide for the lighting of streets of towns and cities and also provide for the prevention and extinguishing of fires and organize, regulate, establish and disband fire companies.

Note.—Highway franchises, other than above enumerated,

cannot be obtained except from the legislature, by ordinary grant or enactment.

There does not appear to be any special legislation as to granting franchises for water works, but the charters of the respective cities and towns, give them such powers, that council may grant franchises for furnishing water to inhabitants and to protect property from fire.

Under the constitutional provisions it would seem that perpetual franchises cannot be granted by the legislature, so that if a franchise is granted without specifying a period, the grant would probably be a mere license revocable at any time, unless the grant was accompanied by a contract, which had a specified period named therein.

NEW HAMPSHIRE.

STREET RAILWAYS.

Public Statutes, 1901, page 528, Chapter 147. In this chapter, the words "street railway corporation" include all railway corporations authorized to lay and use any part of their railway tracks in public highways and the word "towns" may mean cities or towns. "Selectmen" may mean selectmen of towns or the mayor and aldermen of cities.

Street railway companies may be created and organized in the mode prescribed in Sections 1 to 20 (which refer to liability of incorporators), inclusive of Chapter 150 of the Public Statutes, all the provisions of which, except as herein modified, are hereby made applicable to all such corporations and the question whether the public good requires the proposed street railway and whether the public good requires that it shall be built on the proposed routes shall be determined in the manner provided in Sections 8 to 13, inclusive, of Chapter 156 of the Public Statutes.

The capital stock of such corporation, to be paid in cash, shall not be less than \$3,000 for each mile of the proposed railroad if the gauge thereof is to be three feet or less and

not less than \$5,000 each mile if the gauge is to be more than three feet.

Section 528. Location of street railways, by whom.—All parts of street railways occupying any portion of a public highway or street shall be located thereon by the mayor and aldermen of cities or selectmen of towns in which such portions of highways or streets may be located.

After it has been determined that the public good requires the building of the proposed railway, upon petition of the directors of such railway corporation for the location of its tracks, the mayor and aldermen of the city or the selectmen of the town shall give notice of the time, place, when and where they will consider such petition for the location of the road. After the hearing thereof, they may grant the location under such restrictions as they deem the interests of the public require, but the same, after public hearing, may be changed to other parts of the same highway or street by a subsequent order. An appeal therefrom may be had to the board of railroad commissioners. The boards of mayor and aldermen of cities and selectmen of towns shall assess the damages caused by reason of the location of such road to the abutting land owners, subject to the right of appeal in the same manner as now provided by law in the laying out of highways.

Public Statutes of 1901. Use of streets for poles and wires to be authorized by selectmen.—Telegraph, telephone, electric light and electric power poles may be erected and maintained in any public highway and the necessary wires may be strung on such poles or placed beneath the surface of such highway for which purpose such person or corporation shall petition the selectmen of the town to locate the route thereof and grant the license therefor. The selectmen may grant a license for such time as they may deem expedient and may from time to time change the terms and conditions thereof and may revoke it whenever the public good requires. They shall fix and state therein the size and location of such poles, structures, the distance between them, the number of wires to be used and the distance above and below the surface of the highway. The selectmen may make such locations therein as justice may require and may assess all damages to persons and property caused by the erection of any poles or other structures, subject,

however, to appeal as in cases of the assessment of damages in laying out highways. If selectmen neglect or refuse for thirty days to decide or make returns of their proceedings upon any petition addressed under the act, or if any party whose interests are affected by their decision is dissatisfied therewith, the petitioner or party so dissatisfied may apply to the Supreme Court for relief.

Public Statutes, 1901, page 267. **Selectmen**, upon petition of any aqueduct or gas light company or corporation or of any person who supplies water or gas, may lay out for the petitioner an easement and they may maintain pipes and other structures for conveying water or gas in any unoccupied street or private way in the town if they find that the public good requires it.

Note.—**Public utility companies** are incorporated under special and general laws; and where there is no general law giving such corporations the right to occupy public streets and highways, they are usually incorporated under special laws and their charter defines their rights as to the use of the public highways and public places. The powers of a city or town in this state to grant corporate franchises seem to be limited by the statutes. Municipalities have no power as to water, gas, electric and street railway and other franchised companies unless specially provided in the Act of Incorporation, but usually the manner in which the franchise is to be granted is left with the town or city government.

NEW JERSEY.

CONSTITUTION.

Section 7. The legislature shall not pass any bill of attainder ex post facto law or law impairing the obligation of contract or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

Private or local laws.—The legislature shall not pass private, local or special laws.

Exclusive privilege.—Or grant to any corporation, associa-

tion or individual any exclusive privilege, immunity or franchise whatever.

Railroad tracks.—Or grant to any corporation, association or individual the right to lay down railroad tracks.

No special acts for corporate powers.—The legislature shall pass no special acts conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject nevertheless to repeal or alteration at the will of the legislature.

STREET RAILWAYS.

General Statutes of New Jersey, page 3210. **Elevated railways in highways.**—That any and every street car or horse railroad or railway company or railway or railroad company now operating a street railroad by horse power incorporated under the laws of this state in order to afford more rapid, safe and comfortable means of transporting passengers than is possible on a surface road be and the same hereby is and are authorized and empowered to construct, maintain and operate within the limits of the territory in which such company or companies is and are authorized by law to construct, maintain and operate surface roads, one or more elevated railroads with necessary stations and stairways over the streets or highways in such city or cities, town or towns, township or townships; provided that the cars on such elevated road or roads shall be propelled by means of a wire, rope or cable to be put and kept in motion by a stationary steam power erected at such convenient point or points as may be necessary for the purpose beyond the limits of any streets or public highway and not by locomotive steam engine; and provided, further, that such elevated roads shall be constructed in such manner in regard to the position of the supporting posts or pillars and in regard to elevation above the streets and highway over which they are to be constructed as not to interfere with the use of any public sewer, water pipe or any other public work nor with ordinary public travel thereon except to such extent as may be unavoidable in carrying out the provisions of this act; and provided, further, that no elevated railroad shall be constructed over any street or highway unless the consent in writing of the

owners of at least one-half of the property fronting on such street or highway be first had and obtained, and unless all damage, if any, done to property fronting on such street the owner or owners of which have not given their consent be first ascertained and paid in the manner herein provided; and provided also that the consent of the municipal authorities of the city, town or township in which such road is proposed to be built be first had and obtained.

§ 16, Section 2. **Remedy if property consent cannot be obtained for elevated railway.**—That when any such company or companies or its agents cannot agree with the owner or owners thereof for the use, grant or purchase of any land or materials or easement or easements or the right to pass along the street in front of any property which may be required for the purpose of executing this act or when by reason of the absence of or incapacity of such owner or owners no such agreement can be made, the particular description of the land, materials or easements or rights of passage so required for the use of such company or companies in the construction, maintenance and operation of such road or roads and the necessary appurtenances thereto shall be given in writing under the oath and affirmation of some engineer or proper agent of the company or companies and also the name and names of the occupant or occupants, if any there be, and the owner and owners, if known and their residence if the same can be ascertained to one of the justices of the Supreme Court of this state who shall cause the said company making such application to give notice thereof to the person or persons interested if known and in this state or if not unknown or out of this state making application thereof as he shall direct for any term not less than five days and assign and designate the particular time and place for the appointment of the commissioners hereafter provided for, at which time and place upon satisfactory affidavits of the service or publication of the notices aforesaid he shall appoint under his hand and seal three disinterested impartial and judicious freeholders residents in the county in which the lands, materials or easements in controversy lie, commissioners to examine and appraise the lands, materials and easements or right of passage and assess the damages upon such notice to be given to the persons inter-

ested as shall be directed by the justice making such appointment to be expressed therein not less than five days; and it shall be the duty of such commissioners after having first taken and subscribed an oath or affirmation before some persons duly authorized to administer an oath, faithfully and impartially to examine the matter in question and make true report according to the best of their skill and understanding, to meet at the time and place appointed and proceed to view and examine said land and materials or easements and make a just and equitable estimate or appraisement of the value of the same and the assessment of damages to be paid by the company for such land, materials or easements or right of passage and damages aforesaid, which report shall be made in writing under the hands and seals of such commissioners or any two of them and filed within ten days thereafter together with the aforesaid description of the lands, materials or easements and the appointment and oaths or affirmations in the clerk's or register's office of the county in which the lands, materials or easements are situate to remain of record therein; and thereupon and on payment or tender of payment of an amount awarded as hereinafter provided the said company is hereby empowered to enter upon and take possession of the said lands, materials and easements or right of passage for the purposes aforesaid and the said report or a copy thereof certified by the clerk of said county and the proof of payment or tender of the amount awarded shall at all times be considered as plenary evidence of the right of any such company to have, hold, use, occupy, possess and enjoy the said lands, materials or easements or right of passage, and the said justice of the Supreme Court shall upon application of either party and on reasonable notice to others tax and allow such costs, fees and expenses to the justice of the Supreme Court, commissioners, clerks and other persons performing any of the duties prescribed in this section as he shall think equitable and right, which shall be paid by the company; provided, always, that should any such company or the owner or owners of any of the land, materials and easements feel grieved by the decision of the commissioners aforesaid, he, she or they may appeal to the next circuit in the county wherein the said land, material or easement or right of passage may be.

Act of March 11, 1893, page 3210, § 10, Section 1. **Electricity, etc., may be used by street railways.**—That any street or horse railway company in this state may use electric or chemical motors or grip cables as propelling powers of its cars instead of horse; provided it shall have first obtained the consent of the township committee or the municipal authorities having charge of the public street or highways in which it is proposed to use such motors or grip cables, which consent may be granted by ordinance.

§ 11, Section 2. **Municipal and county boards, etc., may authorize poles and wires in highways.**—That a municipal board or any public county road board or other authorities having charge or control of any streets, highways or avenues in any city, county, town or township in this state, may when they deem it proper authorize the use of poles erected or to be erected in the public streets or highways with wires strung thereon for the purpose of supplying the motors with electricity, and when the board grants such authority it may in such case prescribe the manner in which of the places where such poles shall be erected and the manner in which the wires shall be strung thereon and the same may be authorized and prescribed by ordinance.

§ 12, Section 23. **Validating franchises.**—That any consent heretofore granted contiguous or otherwise whether by resolution or in any other way by any municipality to any street or horse railroad company to use electric or chemical motors or grip cables as the propelling power for its cars and grant any such ordinance or resolution specified or of which the plan of construction has been or may in any way assented to or approved by such municipal authorities shall be as valid and effectual as if the same had been granted pursuant to the provisions of this act; provided, however, that no such consent heretofore granted shall be validated by virtue of anything in this act contained without the assent and approval of the said board of commissioners of electric subways first had and obtained.

Act of May 4, 1886, § 50, Section 1. That an act to which this is a supplement shall apply to all avenues, streets, roads and alleys, laid out by private individuals in towns or villages and parts adjacent thereto which are not under the control of

aldermen, town councils or township committees and where there is any doubt as to such control and in such cases the signatures of a majority of the property holders fronting on such avenues, streets, road or alleyways attested as provided for in this act and duly filed in the clerk's office of the county in which such railway is proposed to be laid, shall be a sufficient grant for that purpose; provided that this shall not apply to streets, roads or alleyways now controlled by any township, plank road, railway or other corporations without their consent as provided in this act.

Act of March 27, 1889, § 55, Section 1. **Locating railway tracks and frontage consent.**—That the board of aldermen, common council or township committee for any municipality or township upon the petition of the directors of any company incorporated under this act or a majority thereof for the location of the tracks of its railway therein conformably to the route designated in their articles of incorporation or for the extension of the same shall give notice to all parties interested by publication in one or more newspapers published and circulated in said municipality or if none be published there, then by posting at least fourteen days before their meeting of the time and place at which they will consider such application for location; and after hearing they shall pass an ordinance refusing such location or extension, or granting the same or any portion thereof under such lawful restrictions as they may deem the interests of the public require; and the location or extension thus granted shall be deemed or taken to be the true location or extension of the tracks of the railway if the acceptance thereon in writing by said directors shall be filed with the Secretary of State within thirty days after receiving notice thereon and a copy thereof delivered to the clerk or other equivalent officer of the municipality or township; provided, that no street railway shall be constructed in the same street or highway in which a street railway may then be constructed and operated within 1,000 feet of said railway nor parallel through it within less than two blocks thereof for a distance greater than 200 feet without the written consent of the company then operating said railway for a distance not greater than 300 feet in any street or highway in which the street railway may then be constructed, in case the portion of such

street or highway in which it is proposed to construct a new road is within 200 feet of a passenger depot of any steam railroad and is also the street or highway connecting two other streets or highways in both of which it is proposed to construct said new road or extension; and in such case it shall not be necessary to obtain and file as hereafter provided, the consent of the owners of property fronting on that portion of said street or highway in which said street railway is already constructed as aforesaid; provided always that nothing herein contained shall be deemed to authorize the construction of any street railway upon any road lawfully built or controlled by any turnpike, plank road or toll company without the written consent of such turnpike, plank road or toll road company; and provided further, that such ordinances shall not be passed or adopted until the company applying for the location of route shall file with the clerk and the board of aldermen or other body to which application is made the written consent of the owners of at least one-half of the property fronting on such portion of street or highway through which the railway is to be made, which written consent shall be acknowledged by the subscribers thereto as are deeds entitled to be recorded; provided that the consent as aforesaid of any executor or administrator having power to sell real estate shall be sufficient for the lands which he has power to sell. If the route thus accepted be shorter than the route designated in the certificate of incorporation a proportionate part of the moneys paid to the said treasurer upon filing the certificate of incorporation shall be forthwith refunded by the treasurer to said company; but none of such money shall be refunded as aforesaid for any distance in length of route less than one-half mile.

§ 59, Section 1. **Extension of tracks of street railway.**—That the board of aldermen, common council or township committee of any municipality or township may from time to time under such restrictions as they may deem the interests of the public may require and under the restrictions contained in the eighth section of this act, upon petition, authorize a street railway company whose tracks have been located and whose charter has been duly accepted or his lessees or assigns to extend the location of its tracks within or into every municipality or township, and such extended location shall be deemed to be the

true location of the tracks of the company if the acceptance thereof in writing is filed in the office of the Secretary of State within thirty days after the passage of such ordinance; and the said company shall at the time of such extension file therewith the certificate of the length of such extension, sworn to by the president, treasurer and secretary and a majority of the directors of said company and shall at the same time pay to the State Treasurer the sum of two thousand dollars for each mile of the said extension and a proportionate sum for each fraction over and under a mile; such moneys shall be refunded to the company or forfeited to the use of the state at the times and in the manner provided in the third and tenth section of this act; and the building of such extension shall not be commenced until the foregoing requirements shall have been complied with.

§ 60, Section 1. That the board of aldermen or other authority having control of the streets and highways in any borough or other municipality in this state shall have all the powers in relation to the location of the tracks of the railway of any company organized under the act to which this is a supplement or the supplements thereto as are conferred by said act or supplements, upon the board of aldermen or common council of any municipality; and where the application for the location of the tracks of its railway or the extension thereof is made by any company to any board, committee or other authority they shall consider such application and grant or refuse the location, or extension petitioned for, or any portion thereof, by a motion or resolution duly passed for this purpose; provided such location or extension shall in no case be granted unless the company applying therefor shall have made the deposit with the State Treasurer required by the act to which this act is a supplement.

§ 69, Section 1, Act of April 16, 1891. **Location of street railway within two blocks of another.**—That any street railway company incorporated under any general law of this state may apply to the board of aldermen or governing body of any city for location of the tracks of its railway thereon conformably to the route designated in their articles of incorporation and with the assent of such board or

governing body shall have power to lay and operate such railway in any of the streets or avenues of said city with such permission; provided, such railway is more than one-half mile in length notwithstanding a street railway may be constructed and operated within 1,000 feet or less of said proposed railway and notwithstanding that such proposed railway shall be parallel with the street railway within or less than two blocks therefrom and it shall not be necessary for such company to obtain the written consent of the company then operating such railway within such 1,000 feet or within two blocks thereof; provided the terminus of such proposed railway at which end is not within one-half mile of the terminus of any street railway at which end then constructed and being operated; and provided, further, that no more than one-sixth of said proposed railway shall be constructed parallel to any road already constructed and then being operated and not more than one-sixth of any such proposed road shall be allowed to be constructed within less than two blocks of any road then constructed and operated. In no case shall such proposed road be allowed upon any portion of the street or avenue where the road is now constructed and operated.

Act of April 30, 1887, § 71, Section 1. **Location of street railway on turnpike within corporate limits.**—That any street railway company duly organized pursuant to the law may construct and with horses may operate street railways for the transporting of passengers and chattels for hire upon and along such portion of any turnpike road as enters and is located within the limits of any incorporated town or borough of this state and upon and along such portion of such turnpike as extend outside of such limits for a distance of 1,300 yards in either direction after having obtained the consent of the owners of such turnpikes so to do; provided, that the ordinances or resolution authorizing the construction of such railway shall have been first passed or adopted by the commissioners of any town or borough and that the written consents of not less than two-thirds of all the persons owning lands abutting on such portion of such turnpike in each and every incorporated town or borough shall have been first obtained and filed in the office of the clerk of the county wherein such portion of such turnpike is situated.

Act March 9, 1904. Street railways may be built by a turn-pike company.

Act of April 9, 1889, § 85, Section 1. **Extension of time for building street railways.**—That the time for commencing and building any railroad of any corporation heretofore organized under any special act of the legislature of this state and empowered by any supplement to lay railroad tracks and operate a horse railroad whose time limit has expired, shall be extended for the further period of two years from the passage of this act; provided, however, that this act shall not apply to any corporation, unless such corporation shall first and as a condition precedent to the exercise of any power granted by this act file in the office of the Secretary of State an agreement to be approved by the Governor and attorney general waiving all rights to exemptions from taxation and from privileges and advantages under any law (if there any be) establishing any mode of taxation of any such corporation and a further agreement to be bound by any general law of this state now in existence or that may hereafter be passed taxing such corporations as are now authorized to be taxed by the legislature of the state under any general law and further agreeing that the exercise of any power granted by this act shall not in any way affect the rights of the state (if any there exist) to take the property of such corporation under any existing law of the state; and agreeing further that all laws affecting such corporation shall be subject to alteration or repeal by the legislature; and provided, further, that if any street through which said railroad is proposed to be located shall be paved during the extension of time granted by this act, that in such case no railroad shall be laid down in such street until the company proposing to construct the same shall pay to the proper authorities its pro rata share of the costs of such pavement.

Act of March 14, 1893, § 120, Section 1. **Companies to supply motive power to street railways.**—That it shall and may be lawful for three or more persons, one of whom shall be a resident of the state of New Jersey, to associate themselves into a corporation for the construction and operation of motors, cables and other machinery for supplying motive power to street railways or other railroads operated as street railways and the necessary apparatus for supplying same; and such corporation when

formed in accordance with the provisions of this act shall have power to enter upon streets, roads, lanes, alleys or other highways upon which any street railway or other railroad operated as a street railway is now or hereafter to be constructed (with the consent of the owner or owners, lessee or lessees of such railway or of the persons operating the same) and make, construct, apply, maintain and operate such railway motors, cables, electrical and other devices and appliances with power to erect, construct, apply, maintain and use such tunnels, subways for any cables, poles, wires, conduits or other devices for transmitting and using electrical or other forces as will provide for the traction of cars on street railways or other railroads operated as street railways and construct lines of street or passenger railway and all necessary turnouts, sidings and bridges, on, along, through or over any street, road, lane, alley, stream or highway either by the extension of existing railways or by the building of new lines thereon either wholly within or partly within or wholly between or partly within and between cities, towns, boroughs, villages, townships and counties and the same when constructed to equip, maintain, use and operate for the carriage of persons and property for compensation to be made such corporation and to contract with any other person or persons natural or artificial for such construction, equipment, maintenances, use or operation. Provided, that no corporation created under this act shall enter upon or use any streets, road, alley, lane or other highway under color or by virtue of this act for the extension or construction of new lines of railway or for the operation thereof without the consent of the board of aldermen, common council or body having control of streets or highways or other governing bodies of the city, town, borough, village, township or county into or within the limits of which such new lines of railways is proposed to be extended, constructed or operated; nor shall any corporation created under this act possess the power to use on any of its railways within the limits of any street and on the surface thereof any locomotive or other engine moving on its rails which is propelled by steam; provided, further, that the adoption of any motor from motive power herein authorized to be used shall not be deemed to preclude change to any other motor or motive power herein authorized when and as often as the business of

such corporation from time to time in its judgment so require.

Act of March 30, 1896, page 208, Laws of New Jersey, 96, Chapter 144, Section 1. **Freight and express.**—It shall not be lawful for any traction or other company or companies owning, leasing or operating street railways or street railroads operated as street railways whose tracks are located upon and run in and along street or streets, road or roads of any city, town or borough, village or township or other municipality in this state to carry over its tracks any freight or express matter; provided, further, however, that this act shall not prevent such companies from carrying supplies of their own; provided, however, that this act shall not apply to such company or companies which may now be lawfully engaged or has heretofore been lawfully engaged in the carrying of freight and express matter.

Section 2. Any corporation or persons violating the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall in the case of a corporation be punished by a fine not exceeding \$100 for each offense and in case of an individual in which terms shall be included any officer of a corporation under whose direction or by whose acquiescence or with whose knowledge the offense shall have been committed shall be punished by a fine not exceeding \$100 or imprisonment in the county jail not exceeding six months at the discretion of the court.

Section 3. All acts and parts of acts both general or special inconsistent with the provisions of this act be and the same are hereby repealed and that this act shall take effect immediately.

Act of April 21, 1896, page 329, chapter 192, Section 1. **Manner in which street railways obtain rights to use streets and highways.**—No street railway shall and after the passage of this act be constructed over or upon any street, avenue, highway or other public place in any city, town, township, village or borough of this state except upon the consent of the governing body of such municipal town, township, village or borough and such consent shall be granted only upon the petition of the corporation desiring to construct, operate and maintain such street railroad to be filed with the clerk or other equivalent officer of such municipal town, township, village or borough; before such permission shall be granted public notice

of the application therefor shall be given by publication in one or more newspapers published or circulating in said city, town, township, village or borough to be designated by the governing body of such city, town, township or borough and by posting in five public places therein to be likewise designated. Such notice to be within fourteen days before the meeting of such governing body at which such application shall be considered; such notice shall specify the name of the corporation presenting such petition, the date of filing the same, the character of the road intended to be constructed, operated or maintained, the motor power to be used thereon and the street or streets or other public highways or places through which the same shall extend. That upon the date fixed by such public notice or upon such subsequent date as the hearing of said matter may be adjourned to the said governing body may by ordinance and not otherwise grant, or may by resolution refuse permission to construct, maintain and operate a street railway upon the street or streets, highway or highways or other public places or places named in the said petition or may in its discretion grant permission for the construction, maintenance and operation of such street railway upon part of the streets, highways or public places designated in such petition and refuse permission to construct, maintain and operate such street railway upon the remainder of such streets or public places; and such permission thus granted shall be binding and effective if the acceptance thereof in writing by the corporation making such petition shall be filed within thirty days after receiving notice thereof with the clerk or other equivalent officer of the governing body granting such permission; provided, however, that such permission to construct, maintain and operate a street railway shall in no case be granted in whole or in part until there shall be filed with the clerk of such governing body or other equivalent officer, the consent in writing of the owner or owners of at least one-half in amount in lineal feet of property fronting on the streets, highways, avenues and other public places or upon the part of the street or streets, highway or highways, avenue or avenues and other public place or places through or upon which permission to construct, operate and maintain a street railway is asked and any such consent may be signed by the attorney in fact thereunto duly authorized by any owner or

by the executor or trustee holding the legal title or having power of sale, which consents shall be executed and acknowledged as are deeds entitled to be recorded; provided, however, that if any consents have heretofore been obtained to the construction, operation and maintenance of any such railway in, along and upon any street or streets, road or roads, highway or highways, public place or places in this state and such consents have been filed as herein directed such consents under any application made under this act, shall have the same force and effect and be considered and counted the same as consents given and filed after the passage of this act; whenever consent and permission has been obtained for the construction, operation and maintenance of any street railway as hereinbefore provided, such consent and permission shall be deemed and held to include the right, to construct, erect, use and maintain such poles, wires, conduits and other structures and appliances as shall be appropriate or necessary to operate such street railway with the power designated in the petition therefor; every application made as aforesaid for the construction, operation and maintenance of a street railway shall be accompanied with a map or description of the route of said railway showing also the proposed location of rails or tracks and the location of poles or conduits; and the said governing body to whom application is made may either at the time of giving its permission aforesaid or at a subsequent time fixed and determined by resolution the location of the rails or tracks of such street railway in the streets, highways and public places in which the construction, operation and maintenance of such street railway is granted and may in like manner determine the place or places in which poles shall be erected and conduits constructed.

Section 2. Any street railroad company owning, operating or controlling a street railroad in this state desiring to change the motive power used thereon may obtain permission and authority to do so on application by petition to the said governing body upon notice and hearing as specified in section one for permission to construct and operate; such petition shall designate the motive power which such company desires to use and the consent of such governing body for the use of such motive power shall be held to include the right to construct, maintain or use within the lines of the said public streets or

highways such poles, wires, conduits and other fixtures and appliances as shall be necessary and appropriate to operate such street railroad with the power designated in such petition; and such governing body may at the time of giving its consent to such change of motive power or subsequently designate by resolution the place or places where poles shall be necessary or proper for operating such street railroad by means of the motive power mentioned in the petition. Provided, however, that no further permission to change the motive power shall be necessary where the authority to change has heretofore been conferred but in every such case the location of poles or conduits shall be made in the manner herein provided; provided, however, that if any board, body or public authority other than the governing body of such municipal town, township, village or borough shall have control of any of the streets or highways in and over which such proposed street railroad is to be constructed or in and over which the tracks of such company are located, the consent of such other board, body or public authority shall also be required before such corporation shall have the right to construct, operate and maintain such street railroad or to change the motive power used thereon which consent shall be granted only upon notice to be given in the same manner as herein provided for any respect to the notice to be given of application to the governing body of such municipality.

Section 3. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed and that this act shall take effect immediately.

Act of May 12, 1896, Chapter 211, Section 1. **Extension of tracks.**—Any street railway company created and organized under any law of this state now owning or operating a street railway may extend the lines of its railways through and along any streets, avenues or highway in any municipality of this state, subject, however, to all the provisions, restrictions and conditions of the general laws of this state relating to street railways and to the obtaining of the consent of property owners and the granting of the consent of the municipal authorities of the municipality within which it is proposed to make such extension.

GAS COMPANIES.

Act of April 2, 1876, General Statutes, 1610. Act of April 11, 1902, page 231. **Use of streets by gas companies.**—That any corporation formed under this act shall have full power to manufacture and sell and to furnish illuminating gas and shall have power to lay conductors for conducting gas through the streets, lanes, alleys and squares in such city, village or town having first obtained the written consent of the municipal authorities of such city, village or town under such regulations as they may prescribe.

Act 1879, page 316, General Statutes, 1613. **Extension of pipes.**—Such corporation may extend its mains and pipes to any neighboring city, town or village wherever no gas company already exists for the purpose of furnishing the same with illuminating gas, provided the common council township committee of the municipal authority of such neighboring city, town or village shall grant permission for that purpose.

When such permission is given the said company shall have the same rights and privileges of laying gas mains and the like to and in such neighboring city, town or village as it has under its original organization as the city, town or village where it was originally located.

ELECTRIC LIGHT COMPANIES.

Act of March 17, 1893, page 412, General Statutes, 963. Act of April 21, 1896, page 322. **Rights to use streets and highways, by consent of property owners.**—Any company organized under the laws of this state for the purpose of constructing, maintaining and operating works to distribute and supply electricity for electric light, heat or power shall have full power to use the public roads or highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires upon first obtaining the consent in writing of the owners of the soil. Provided, however, no posts or poles shall be erected on any street or incorporated city or town or on any street of any township without first obtaining from the incorporated town or city or from the township committee of such township a designation of the streets in which the same shall be placed and the manner of placing same and they shall be subject

to such regulations as may be imposed by the corporate authorities or legislative bodies of such cities, towns and townships and such companies are empowered to lay pipes and conduits and to lay wires therein beneath the public roads, highways, avenues and alleys as they may deem necessary, provided that said pipes and conduits shall be laid at least two feet below the surface and shall not be laid nearer than three feet to any water or gas main, but no public street shall be opened for the purpose of laying pipes and conduits without the consent of the board of aldermen, common council or township committee of such city, town or township.

Any wires for conveying electricity or the conduits containing said wires shall be laid at the greatest practicable distance from the outside of any water or gas pipe now laid down and that such distance shall not be less than three feet except in case where it shall be necessary that the wires or conduits shall cross or intersect any such water or gas pipe.

General Statutes, 1094. Electric wires cannot be attached to any bridge without permission first has been obtained from the board of chosen freeholders of the county or other proper authority wherein such bridge is situate.

WATER COMPANIES.

Act of April 21, 1876, page 318, General Laws, 2199. **May use streets and highways.**—When any water company has executed and fixed its certificate of incorporation and obtained and filed the consent in writing of the corporate authorities, if any, of the town or city proposed to be supplied with water, it shall have power to take and divert any and all such springs and streams of water and build, erect, alter, repair, enlarge and maintain all such reservoirs and works and lay down all such pipes and conduits for water at such times and in such places as shall be necessary and proper to enable said corporation to carry into effect the purposes of the incorporation. It may enter upon any and all lands in the neighborhood of the village, town or city which it intended to supply with water.

They are empowered to lay their pipes beneath such public roads, streets, avenues and alleys as they may deem necessary for the purpose aforesaid free from all charge to be made by

any person or persons or body politic whatsoever for said privilege, provided that all pipes shall be laid at least three feet below the surface of the same and provided consent shall be obtained from the corporate authorities of any town through which the same may be laid.

NEW MEXICO.

ORGANIC LAW.

September 30, 1850. **Special laws** cannot be passed incorporating cities, towns or villages or changing or amending the charter of any town, city or village.

Or granting to any corporation, association or individual the right to lay down railroad tracks or amending existing charters for such purpose.

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

MUNICIPAL CORPORATIONS.

Section 2402, General Laws of New Mexico, 1899. The city council and board of trustees in towns shall have among other things the following powers:

Power of cities and towns.—To lay out, establish, open, alter, grade, pave and extend streets, alleys, parks and public grounds, etc.

Streets, etc.—To regulate the use of same.

Lighting.—To provide for the lighting of same.

Water mains.—To regulate the opening for the laying of water mains and pipes and the building and repairing sewers, tunnels and drains and erecting gas works.

Railroad tracks.—To license, regulate and control the laying of railroad tracks; to provide for and change the location, grade and crossing of any railroad and to control and regulate and prohibit the use of steam engines and locomotives propelled by steam power within the corporate limits.

The consent of land owners is necessary for use of the streets.

To compel street railroads to raise or lower their railroad tracks to conform to any grade which may at any time be established by the city or town.

Frontage consent necessary for right of street railway to use streets.—The city council or board of trustees shall have no power to grant the use of or the right to lay down any railroad track in any street of the city or town to any steam or horse railroad company except upon the written consent of the owners of land representing more than one-half of the frontage of the street or so much thereof as it is sought to be used for railroad purposes.

When the right to build and operate water and gas works is granted it shall be for a term not more than twenty-five years.

FRANCHISE FOR STREET RAILWAY, WATER AND LIGHTING.

They shall have power to grant by ordinance franchises and privileges for street car lines, water works, lighting works and other public conveniences and comforts for the furnishing of which such franchises and privileges are necessary.

Rates may fix price to be charged for gas, water or electricity.—That the city or town is vested with the power to regulate the prices to be charged by any individual or corporation for gas, electric light and water furnished by said individual, firm or corporation to such cities and town, provided this act shall not affect any contract now existing (Act March 18, 1897).

NEW YORK.

CONSTITUTION.

Article 111, Section 18. Legislature shall not pass private or local bill incorporating villages or granting to any corporation, association or individual the right to lay down railroad tracks, or granting to any private corporation, association, individual any exclusive privilege, immunity or franchise whatever.

CORPORATIONS.

Article 8, Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where the judgment of the legislature, the objects of the corporation cannot be obtained under general laws.

Consent of property owners and local authorities necessary for operation of street railroad.—No law shall authorize the construction and operation of a street railroad, except upon the condition that the consent of the owners of one-half of the value of the property bounded on, and the consent also of the local authorities having the control of that portion of the street or highway upon which it is proposed to construct and operate such railroad, be first obtained; or in case the consent of the owners cannot be obtained the appellate division of the Supreme Court in the department in which it is to be constructed, may upon application appoint three commissioners who shall determine after a hearing whether the railroad ought to be constructed or operated, and their determination confirmed by the court may be taken in lieu of the consent of the property holders.

REQUISITES TO EXERCISE OF POWERS OF FUTURE RAILROAD CORPORATIONS.

Cummings & Gilbert's General Laws, Section 3107. No railroad corporation hereafter formed under the laws of this state shall exercise the powers conferred by law upon corporations or begin the construction of its road until the directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the road is proposed to be erected at least once a week for three successive weeks and shall file satisfactory proof thereof with the board of railroad commissioners; nor until the board of railroad commissioners shall certify that the foregoing conditions have been complied with, and also that public convenience and necessity require the construction of such railroad as proposed in said articles of association. The foregoing certificate shall be applied for within six months after the completion of the three weeks' publication hereinbefore provided for. If certifi-

icate is refused no further proceedings shall be had before the board but the application may be renewed after one year from the date of said refusal. Prior to granting or refusing said certificate the board shall have the right to permit errors and omissions to be supplied and corrected. After the refusal to grant such certificate the board shall certify a copy of all maps and papers on file in its office and of the findings of the board when so requested by directors aforesaid. Such directors may thereupon present the same to the general term of the Supreme Court of the department within which said road is proposed in whole or in part to be constructed and said general term shall have power in its discretion to order said board for reasons stated to issue said certificate and it shall be issued accordingly. Such certificate shall be filed in the office of the Secretary of State or his deputy, and shall have affidavits of the fact thereof. Nothing in this section shall prevent any such railroad corporation from causing such examinations and surveys of its proposed railroad as may be necessary for the selection of the most advantageous route; and for such purpose by its officers or agents and servants to enter upon the lands or waters of any person but subject to the responsibility of all damages which shall be done thereto.—Act of March 26, 1902.

C. & G. Statutes, Vol. 4, page 713. **Railroad commissioners may certify part of the route of the street service railroad. Power to revoke certificates. Street surface railroad extension.**

Whenever publication is made by a street surface railroad company for a certificate of public convenience and the necessity as required by the provisions of the foregoing section, and it shall appear to the board of railroad commissioners after examination of the proposed route of the applicant company that public convenience and a necessity did not require the construction of such railroad as proposed in its articles of association but did require the construction of a part of said railroad, the board of railroad commissioners may issue its certificate for the construction of such part of the said railroad as seems to it to be required by public convenience and a necessity. In case any railroad company which shall hereafter obtain a certificate of the board of railroad commissioners that public

convenience and a necessity require the construction of a whole or part of said railroad shall fail to begin such construction within two years from the date of the issuing of said certificate the board of railroad commissioners may inquire into the reason of such failure and the said board may revoke said certificate if it shall appear to be in the public interest so to do. Any street surface railroad company which proposes to extend its road beyond the limits of any city or incorporated village by a route which will be practically parallel with the street surface railroad already constructed and in operation shall first obtain the certificate of the board of railroad commissioners that public convenience and a necessity require the construction of such extension as provided in the case of a railroad corporation newly formed. Before making application for such certificate the corporation shall cause to be advertised the route of the proposed extension in any one or more newspapers in each county in which the extension is to be constructed at least once a week for at least three successive weeks and shall file satisfactory proof of such publication with the board of railroad commissioners. Nothing in this section shall prevent street railroad companies from making extensions within the limits of cities or incorporated villages upon compliance with the provisions of law now applicable thereto.

C. & G. General Statutes, Vol. 3, § 90, page 3128. The provisions of this article shall apply to every corporation which under the provisions thereof or of any other law has constructed or shall construct and operate or has been or shall be organized to construct or operate a street surface railroad or any extension or extensions, branch or branches thereof for public use in the convenience of persons and property for compensation upon and along any street, avenue, road, highway or private property in any city, town or village or in any two or more civil divisions of the state and every such corporation must comply with the provisions of this article. Any street surface railroad corporation at any time proposing to extend its road or to construct branches thereof from time to time shall file in each of the offices in which its certificate of incorporation is filed a statement of the names and description of the streets, roads, avenues, highways and private property

in or upon which it is proposed to construct, maintain or operate such extension or branches. Upon filing any such statement and upon complying with the conditions set forth in Section 92 of the railroad law every such corporation shall have the power and privilege to construct, extend, operate and maintain such road, extensions or branches upon and along the streets, avenues, roads, highways and private property named and described in its certificate of incorporation or any such statement. Every such corporation before constructing any part of its road in private property described in its articles of association or certificate of incorporation or statement and before instituting any proceeding for the condemnation of any real property shall make a map and profile of the route adopted by it upon or through any private property which map and profile shall be certified by the president and engineer of the company or the majority of its directors and shall be filed in the office of the clerk of the county in which the road is to be constructed and all provisions of Section 6 of the act hereby amended so far as applicable shall apply to the route so located. If any such street surface railroad company is unable to agree for the purchase of any such real property or of any right or easement thereof required for the purpose of its railroad or if the owner thereof shall be incapable of selling same and if after diligent search and inquiry the name and residence of such owner cannot be ascertained it shall have the right to acquire the title thereto by condemnation in the manner and by the proceedings provided by condemnation law. Nothing in this section shall be deemed to authorize a street railroad corporation to acquire real property within the city by condemnation.—Act of May 9, 1903.

C. & G. General Statutes, Vol. 4, page 718, § 91. **Consent of property owners and local authorities.**—A street railroad or extensions or branches thereof shall not be built, extended or operated unless the consent in writing acknowledged or proved as are deeds entitled to recorded of the owners in cities and villages of one-half in value, and any town not within the corporate limits of any city or village of the owners in two-thirds in value of the property bounded on and also the consent of the local authorities having control of that portion of the street or highway upon which it is proposed to build or

operate such railroad extension or branch shall have been first obtained. The consents of the property owners in one city, village or town or in any other civil division of the state shall not be of any effect in any other city, village or town or other civil divisions of the state. Consents of property owners heretofore obtained to the building, extending, operating or change of motive power shall be effectual for the purpose therein mentioned and may be deemed to be sufficiently proved and shall be entitled to be recorded whenever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgments of deeds or before or in the presence of a subscribing witness and without record whether or not the subscribing witness shall have affixed his signature in the presence of the subscriber, provided that the proof of such signing, execution or acknowledgment shall have been made by such subscribing witness in the manner prescribed by chapter three, part two, of the Revised Statutes. In cities the common council acting subject to the power now possessed by the mayor vetoing ordinances. In villages the board of trustees and in towns the commissioner or commissioners of highways shall be the local authority referred to. Except that any villages where the control of the streets is vested in any other board or authorities, such other board or authorities shall be the local authorities referred to and the consent of such other board or authorities hereafter or heretofore obtained shall be sufficient. If in another county, the exclusive control of any street, avenue or other property, extension or branch is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment roll of the city, village or town in which it is situate completed last before the local authorities shall have given their consent except property owned by said city, village or town or by the state of New York or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as shown by said assessment roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village

or town as the owners of such property. Whenever heretofore or hereafter the railroad has been or shall be constructed and put in operation for one year or the motive power thereof has been or shall be changed to put in operation for the similar length of time such facts shall be presumptive evidence of the requisite consents of local authorities, property owners and other authority to the construction, maintenance and operation of such railroad or change of motive power have been duly obtained, but no consent of the local authorities heretofore given shall be deemed invalid because of any operation of the road or route consented to in being connected to any existing road or route and the corporation obtaining or acquiring such consent and all statements of extension filed under Section 90 of this article in reference to the route or part thereof described in any consent of local authorities are hereby ratified and confirmed whether the same were filed before or after the obtaining or acquiring of such consents; provided, however, that nothing herein contained shall be construed to affect any portion of the street surface railroad which is now in or upon any portion of a street which is under the jurisdiction of the particular department in any city containing a population of over twelve hundred thousand inhabitants.

C. & G. Statutes, Vol. 3, page 3133, § 93. **Condition upon which consent shall be given and sale of franchises at public auction.**—The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more according to the last federal census or state enumeration must contain the condition that the right, franchise and privilege for using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation with its bond or such undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city for the fulfillment of such agreement and for the commencement and completion of its railroad within the time designated by law and for the performance of such additional conditions as the local authorities in their discretion may prescribe. Whenever such consent shall provide for the sale at public auction of

the right to construct and operate an extension of an existing railroad such consent shall provide that but one fare shall be collected for passage over such branch or extension or over the line of road which shall have applied therefor; and further that if such right shall be purchased by any corporation other than the applicant that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road whether owned or leased, which shall be applied therefor for such branch or extension, and that if such right shall be purchased by the applicant the percentage to be obtained shall be calculated by such portion of its gross receipts as shall bear the same proportion to the whole value thereof as to the length of such extension or branch shall bear to the entire length of its road whether owned or leased. The bidder to whom said right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale or five days prior to the day to which said sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer or the city a bond in writing and under seal with sufficient surety to be approved by such comptroller or officer conditioned that if such right, franchise and privilege shall be sold to such corporation to pay to the city where such railroad is situated the sum of \$5,000 as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale comply with the provisions of this article pertinent thereto and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction and completion of its railroad and also conditioned to pay to the corporation first applying for the consent if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be

paid. Notice of the time and place and terms of sale and of the route or routes to be sold and the conditions upon which the consent of the local authorities to the construction, operation and extension will be given and published by such authorities for at least three successive weeks and in any city having two or more daily newspapers at least three times a week in two of such papers to be designated by the mayor and in any city where two daily papers are not published at least once a week in the newspapers published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and take charge of the sale and may adjourn same but not more than four weeks in all unless further adjournments shall in his discretion be necessary by reason of the pendency of local proceedings and shall cancel any bid if in excess of the gross receipts, leaving in force the highest bid not in excess, or if the bidder shall not have furnished adequate security entitling such bidder to bid or shall otherwise fail to comply with the terms and conditions of sale and shall resell the consent and license, in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep books of account of the business and earnings of such railroad which books at all times shall be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentage of gross earnings agreed upon and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation and after it shall have had an opportunity for judgment, the court shall declare the right to operate and use such railroad forfeited and authorize the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent or right heretofore granted shall be authorized, except upon the condition that the same shall be subject to all liens and encumbrances existing on such railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided for in such consent or in some renewal thereof, may be forfeited at the expiration

of two years thereafter, and every consent by the local authorities of any city of the first class or of any city, town or village now embraced within the corporate limits of any city of the first class heretofore given it or acquired by any street surface railroad corporation since January first, 1890, is hereby ratified and confirmed and shall be deemed to be in full force and effect and shall continue until and including December 31, 1903, when it may be forfeited, unless prior thereto the required consent of property owners or determinations by the appellate division of the Supreme Court in lieu thereof shall have been first obtained. The board of sinking fund commission of any city shall have power to reduce, compromise or release any obligation or liability to the mayor, aldermen and commonalty of such city under the provisions of Chapter 642 of the laws of 1886, and of this chapter, whenever in the opinion of such board such release or compromise shall be just or equitable or for the public interest; the reason for any such release or compromise shall be stated in the recorded proceedings of such board. No lease by any company organized under Section 2 of the railroad law and owning a right, privilege or franchise for using any street, avenue, highway or public place for railroad purposes, which has heretofore been sold under the provisions of this section, hereafter made to any street surface railroad company which is not subject to the payment of any percentage pursuant to this section and which is not organized for the purpose of operating a railroad in a city of the first class, shall be valid until the leased company shall have filed in the office of the secretary of state and in the office of the clerk of the county where its certificate of incorporation is filed, its acceptance in writing and under its corporate seal of the provisions of this section as now amended; and upon such acceptance being filed the total percentage amount thereafter to be paid annually under this section and under Section 95 of this act shall be at the rate of five per cent of the gross receipts derived from the operation of the roads of the lessee and the lessor companies considered as one system. The lessee company at the time of filing its acceptance aforesaid shall also file in the same offices a bond to the people of the state, executed in duplicate by it and a surety company authorized by law to act as surety on bonds and undertakings, in the penal sum of

\$50,000, and conditioned for the faithful payment annually of the total percentage aforesaid; and such bond shall be deemed to be a full compliance with the condition for the bond or undertaking required by this section to be provided for in the conditions of the consent of the local authorities and shall supersede any such bond or undertaking theretofore given. Whenever it shall be desired to unite two street surface railroad routes at the same point not over one-half mile from such respective lines or routes for public travel and the corporation or corporations owning or using such railroad shall consent to operate such connection as part of a continuous route for one fare, and it shall appear to the local authorities that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same shall be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot it shall be desired to construct an extension or branch not more than one-half mile in length of any street railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in Section 95 of this chapter for the purposes, at the times, in the manner and upon the conditions set forth in such section. The provisions of this section as now amended shall apply to all cities of the first class, but nothing herein contained shall be construed as superseding, repealing or modifying any provision of the charter of any city, town or village, nor as modifying or affecting the terms of a certain contract bearing date June 1, 1892, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract, except that the provisions of this act as amended, which continue and confirm the consents of the local authorities, shall apply to street surface railroads in the city of Buffalo as well as in other cities of the first class. This section shall not modify or affect any contract heretofore entered into between a street railroad corporation and any city of the third

class, town or village regulating the payment of percentages or paving of streets, and any city of the third class, town or village is hereby authorized to enter into any such form of contract with any street surface railroad corporation, and any such contract heretofore entered into is hereby ratified and confirmed. The local authorities may in their discretion make their consent depend upon any further conditions respecting other or further security or deposit suitable to secure the construction, completion and operation of a railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed and respecting the curbing of streets, avenues and highways in one route or several routes for the purpose of a single sale of the franchise right or privilege for all the roads collectively or for the separate sale of each route or street as such authorities may think expedient, and respecting the payment of the percentage agreed to be paid at the sale upon all the lands operated by the successful bidder within the city, and respecting any matter involved in or affecting the computation of percentage payment, and respecting the use of the railroads to be constructed under the consent by any other company, and respecting the interchange of traffic and division of fares between the company operating such railroads and any other company, and respecting the application of any provisions herein contained as to carriage of passengers for single fares and the division of gross receipts and the payment of percentages to the line leased or operated under a contract by the applicant for the extension, and also respecting any other matter concerning the fares between the company operating such railroads and any other company, and respecting the application of any provision herein contained as to the carriage of passengers for single fares and which in their judgment further conditions would do for the public interest. Any and all consents, sales or proceedings heretofore granted, made or taken in substantial compliance with the provisions of this section as now last amended are hereby approved and ratified and confirmed, and any purchaser or successor to or transferee of the rights of the purchaser of any right or privilege heretofore sold substantially in accordance with the provisions of this section as now amended is authorized to acquire the requisite

consents of property owners or in lieu thereof determinations by the appellate division of the Supreme Court and to proceed with the construction of the road at any time within three years hereafter.

Page 3139, § 94. **Proceedings, if property owners do not consent.**—If the consent of property owners, required by any provision of this article, cannot be obtained, the corporation failing to obtain such consents may apply to any general term of the Supreme Court in the department in which it is proposed to construct its road, for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of such application must at least ten days prior thereto be served personally upon each non-consenting property owner by delivering the same to the person to whom such property is assessed upon such assessment roll or by duly mailing the same properly folded and directed to such property owner at his postoffice address, with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and postoffice address are unknown and cannot by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the clerk may direct at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons who shall act as commissioners and who shall within ten days after their appointment cause public notice to be given of their first meeting in the manner directed by the court and may from time to time until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly taken before such commissioners. After a public hearing of all persons interested, the commissioners shall determine whether such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the general term within sixty days of their appointment, unless the court or the judge thereof for good cause shown extend such time, and their determination that such road ought to be constructed confirmed by such court

shall be taken in lieu of the consent of the property owner herebefore required.

Act of April 18, 1901, page 3141, § 96. **Extensions for road over rivers; terminus in other counties. When property owners withhold consent, Supreme Court may appoint commissioners.**—Any street railroad in operation in this state, which shall by two-thirds vote of its directors decide to extend the route of its road so as to cross a river over and upon a bridge now or hereafter constructed under the provisions of any law of this state, may so extend their road over and across such bridge upon such terms as may be mutually agreed upon between it and such bridge company, and may erect a terminus for their road in the county adjoining the one in which their road is now located and in operation upon first obtaining the consent of such bridge company or its lessees and the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of the street or highway upon which it is proposed to construct or operate such railroad, or, in case the consent of such property owners cannot be obtained, the appellate division of the Supreme Court in the district in which it is proposed to be constructed may upon application appoint three commissioners who shall determine, after a hearing of all persons interested, whether such railroad ought to be constructed or operated; and their determination confirmed by the court may be taken in lieu of the consent of the property owners. Whenever the terminus of any public viaduct, bridge or bridges, or public viaduct connected with any bridge or bridges, heretofore or hereafter constructed in and owned and maintained by any city of the first class or town adjoining the same is or shall be located at or adjacent to or within one-half mile of the route of any existing street surface railroad, the corporation owning or operating such railroad may, irrespective of any provisions otherwise applicable thereto contained in any general or local act, upon obtaining the consent of the local authorities and property owners as above provided, and upon complying with the provisions of the railroad law applicable thereto, extend its road or route and construct and operate its railroad to, upon and across such viaduct, bridge or bridges and approaches thereto for the purpose of connect-

ing with another railroad route not more than one-half mile distant from such bridge or viaduct so as to afford a continuous route for one fare, subject to the provisions of the railroad law, or for the purpose of reaching a depot, station or terminus or another railroad, all not more than one-half mile distant from such bridge or viaduct. This section shall not apply to any bridge over the Hudson or East Rivers in the counties of New York and Kings, nor to any bridge or viaduct constructed under the provisions of any so-called grade-crossing law.

Page 3143, §97. **Use of tracks of other roads.**—Any railroad corporation in this state whose cars are run and operated by horses or other motive power authorized by this article upon the surface of the street, excepting the city and county of New York, may, for the purpose of enabling it to connect with and run and operate its cars between its tracks and the depot and car house owned by it, run upon, intersect and use not exceeding 500 feet, the tracks of any other railroad corporation, the cars of which are run and operated in like manner, with the necessary connections and switches for the proper accommodation of the cars upon such track in connection with depot or car house, upon paying therefor such compensation as it may be agreed upon with the corporation owning the tracks to be so run upon, intersected and used. And in case such corporations cannot agree upon the compensation and amount, the same shall be determined and ascertained in the manner prescribed in the condemnation law.

C. & G. Statutes of New York, Volume 4, page 721, §49. **Within what time road to be built.**—In case any such corporation shall not commence the construction of its road or of any extension or branch thereof within one year after the consent of the local authorities and property owners, or the determination of the appellate division of the Supreme Court, as herein required, shall have been given or renewed, and shall not complete the same within three years after such consent or determination shall have been obtained, its rights, privileges and franchises in respect of such railroad or extension or branch, as the case may be, may be forfeited. If the performance of any act required by the railroad law or any prior acts

within the times therein prescribed is hindered, delayed or prevented by local proceedings in any court, such court may also extend such time for such period as the court shall deem proper; or if the performance of any act required by said article within the times therein prescribed is hindered, delayed or prevented by works of public improvements or from any other or different causes not within the control of the corporation upon which such requirements are imposed, the time for the performance of such act is hereby and shall be deemed to be extended for a period covered by such hindrances, delays or prevention. The time for compliance with any requirements in this or any former act by any street surface railroad corporation incorporated for the purpose of constructing a street surface railroad and which has prior to the passage of this act obtained or shall prior to June 13, 1903, obtain such consents or determination is hereby extended until June 13, 1904.

C. G. Statutes of New York, Volume 3, page 3147, § 102. **Street railways cannot be constructed on streets occupied by another railway, over bridges, etc., excepting as follows:—** No street surface railroad corporation shall construct or operate its road or tracks in that portion of street, avenue, road or highway in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings, or in cities, villages and towns of less than 1,250,000 inhabitants over any bridges without first obtaining the consent of the corporations owning and maintaining the same, except that any street surface corporation may use the tracks of another street surface railroad company for a distance not exceeding 1,000 feet, and in any city having a population of less than 35,000 inhabitants, except Long Island City, for a distance not exceeding 1,500 feet, and in cities, villages and towns of less than 1,250,000 inhabitants shall have the right to lay its tracks upon and run over and use any bridges used wholly or in part as a foot bridge, whenever the court upon application for commissioners shall be satisfied that such use is actually necessary to connect the main lines to be constructed or operated as an independent railroad or to connect said railroad with a ferry or with another existing railroad and that the public convenience requires the same, in which event the right to use shall only be given for the compensation, to the extent and in the manner to be ascertained

and determined by commissioners to be appointed by the court, as provided in the condemnation law or by the board of railroad commissioners in cases where the corporations interested shall unite in the request for such board to act.

Page 3148, §103. **Abandonment of part of road.**—Any street surface railroad corporation may declare any portion of its route, which it may deem no longer necessary for the successful operation of its road and convenience of the public, to be relinquished or abandoned. Such declaration of abandonment must be adopted by the board of directors of the corporation, under its seal, which shall be submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by law for meetings of stockholders for the approval of leases of railroad corporations for the use of their respective roads. If the stockholders shall at such meeting ratify and adopt such declaration of abandonment the secretary of the company shall so certify under seal of such corporation upon such declaration. Such declaration shall then be submitted to the board of railroad commissioners for its approval, and if approved by such board such approval shall be endorsed thereon or annexed thereto, and the declaration so certified and endorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing such portion of the route designated in the declaration shall be deemed to be abandoned.

Page 3150, Section 106. The corporate existence and powers of every street surface railroad corporation which has completed a railroad upon the greater portion of the route designated in its certificate of incorporation within ten years from the date of filing such certificate in the office of the secretary of state, and which has operated such completed portion of its railroad continuously for a period of five years last past and is now operating the same, shall continue with like force and effect as though it had in all respects complied with the provisions of the law with reference to the time when it shall have fully completed its road. Every such corporation shall have the right to operate any extension or branch of its railroad now constructed and operated by it which have been so constructed and operated by it for a period of ten years last past with like force and effect as though the route or such extension

and branches were designated in the certificate of incorporation.

OTHER RAILROADS.

Page 3154, § 120. Upon the application of at least fifty reputable householders and taxpayers of any county or city verified upon oath before a justice of the Supreme Court that there is need in said county or city of a steam railroad in the streets, avenues and public places for the transportation of passengers, mails and freights, the board of supervisors of such county may within thirty days thereafter by resolution approve of the application and authorize its presentation to the Supreme Court, and if the railway is to be built wholly within the limits of the city, upon the application of a like number of householders and taxpayers of the city to the mayor thereof, such mayor may within thirty days thereafter endorse upon the application thereof his approval and direction that it may be presented to the Supreme Court; and if the railway is to be built partly within the limits of the city and partly without, such application shall be approved both by the mayor of the city and the board of supervisors of the county, and its presentation authorized by them to the Supreme Court to a special term of the Supreme Court held in the district where such railway is to be built or some part thereof, the court may appoint five commissioners, residents of the city, if the railroad is to be built wholly within the city and of the county if it is to be built wholly or partly outside of the limits of the city to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof and all the matters lawfully submitted to them and discharge the duties imposed upon them by law.

Page 3208, Section 1. **Rapid transit railroad commissioners.**—In each city having over one million inhabitants, according to the last preceding national or state census, there shall be a board of rapid transit railroad commissioners in and for such city, which shall consist of the mayor of such city, the comptroller or other chief financial officer of such city, the president of the chamber of commerce for the state of New York by vir-

tue of his office, and the following named persons, to-wit: Wm. Steinway, Seth Low, John Claflin, Alexander E. Orr and John H. Starin. The members of the state board shall be styled commissioners of rapid transit. Vacancies which may take place in the office so held by the persons specifically named herein as such commissioners shall be filled by a majority vote of the remaining members of said board. The board thus stated shall have and exercise the specific authority and powers hereinafter conferred and also such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon said board by this act.

Page 731. Section 4. **Rapid transit railways.**—The said board may proceed from time to time to consider and determine whether it is for the interest of the public and of the city in which it is appointed that a rapid transit railway or railways for the conveyance and transportation of persons and property should be established therein and by the request in writing of the local authorities of any such city at any time the said board shall proceed forthwith to consider and determine the same questions, and in which case the said board shall conduct such an inquest and investigation as may be deemed necessary in the premises. If after any such consideration and inquest the said board shall determine that a rapid transit railway or railways, in addition to any already existing, authorized or proposed, are necessary for the interest of the public and such city, it shall proceed to determine and establish a route or routes therein and a general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon or any of the property therein affected, and the concurrent votes of at least six members of the board shall be necessary for the purpose of determining and establishing such route or routes and plan of construction. The said board may from time to time locate the route or routes of such railway or railways over, under, through, upon or across any streets, avenues, bridges, viaducts, rivers, waters and lands within such city, including blocks between streets or avenues or partly over, under, upon, through and across any street, avenues, bridges, viaducts and lands within such city,

and partly through blocks between streets and avenues; provided that the consent of the owners of one-half in value of the property bounded in and the consent also of the local authorities having control of that portion of a street, bridge, viaduct or highway upon which it is proposed to construct and operate such railway or railways to be first obtained, and in case the consent of such property owners cannot be obtained that the determination of three commissioners appointed by the general term of the Supreme Court in the district of the proposed construction given after due hearing of all parties interested and confirmed by the court that such railway or railways ought to be constructed or operated, to be taken in lieu of the consent of such property owners; except that no public park nor lands or places lawfully set apart for or occupied by any public building of any city or county or of the state of New York or of the United States, nor those portions of Grand, Classon, Franklin Avenues and Downing Street in the city of Brooklyn lying between the southerly line of Lexington Avenue and northerly line of Atlantic Avenue, nor that portion of Classon Avenue in said city lying between the northerly line of Lexington Avenue and southerly line of Park Avenue, nor that portion of Washington Avenue in said city lying between Park and Atlantic Avenues, nor Bevoise Place, Irving Place and Lefferts Place, Lee Avenue, Nostrand Avenue, Waverly Avenue, Vanderbilt Avenue and Clinton Avenue in said city of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main Streets, nor any part of Fifth Avenue in the city of New York, nor that portion of any street or avenue which is now actually occupied by an elevated railroad structure which shall be occupied by any corporation to be organized under the provisions of this act for the purpose of constructing a railway in or upon any of such public parks, lands or places or upon or along either of the excepted streets or avenues. It shall be lawful for said commissioners to locate the route of a railway or railways by tunnel under any such streets, public parks, lanes, places, rivers or waters and locate the route of any railway to be built under this act across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York or across any of the streets or avenues excepted in this act to any point at which in its

discretion the board of rapid transit commissioners may deem necessary in the location of any route or routes or under or under and along any of said streets or avenues now so occupied or so excepted in this act. Nothing in this act shall authorize the construction of an elevated railway on Broadway south of Thirty-third nor on Madison Avenue in the city of New York. It shall not be lawful to grant, use or occupy for the purpose of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets and places in the city of New York, that is to say, Second Avenue below Twenty-third Street, and Fourteenth Street between the easterly line or side of Seventh Avenue and the westerly side of Fourth Avenue, nor Eleventh Street west of Seventh Avenue, nor any part of Bank Street, Nassau Street, Printing House Square (so-called), south of Franklin Street, Park Row south of Tyron Row, and Broad Street and Wall Street.

C. & G. Statutes, Volume 3, page 3215, Section 7. **Sale of rights to operate rapid transit railways.**—If, after having secured the necessary consents and after having prepared such detailed plans and specifications as are by this act provided for, it shall not have been determined by vote of the people, as provided by Sections 12 and 13 of Chapter 752 of the Laws of 1894, that such railway or railways shall be constructed for and at the expense of such city as hereafter provided, said board shall sell at public auction in the city where such railway or railways are to be built and for the account and benefit of said city the right, privilege and franchise to construct, maintain and operate such railway. Notice of the time and place of such sale shall be published three times a week for at least six successive weeks in at least three daily newspapers published in said city. The board will prescribe all terms and conditions of sale as it may seem to be for the interest of the public and of the city in which the railway or railways are to be constructed. The advertisement of sale shall contain only so much of the said terms, plans and specifications for the construction as the said board may think proper, but said advertisement must state at what place the full terms, plans and specifications must be examined and they shall be subject to examination under such reasonable rules and regulations as the board may prescribe. The terms of sale shall provide for the construction

of the railway or railways under the supervision of the board and for the approval of an engineer or engineers to be appointed from time to time by the board; and the corporation or corporations to be organized for the purpose of constructing and operating such railway or railways as in this act provided shall pay such engineer or engineers such salary as may from time to time be fixed by the said board of rapid transit railroad commissioners. Such engineer or engineers shall hold their office at the pleasure of the said board. The terms of sale shall require the successful bidder to deposit with the comptroller or chief fiscal officer of the city in cash or approved securities such amount as the board may deem sufficient to constitute a guaranty of full compliance with the terms of sale by the purchaser and by the corporation to be formed for the purpose of building and operating such railway as hereinafter provided. Said bids and all rights which may have been acquired thereunder shall become null and void and of no effect at the option of said board shall there be a failure to organize a corporation to exercise such rights, privileges and franchises as required by said terms of sale and this act, or for any violation of any of the regulations of said terms of sale which shall be complied with before such corporation is organized and thereupon any deposit which may have been made pursuant to such terms of sale shall be paid into the treasury of such city upon the certificate being made and filed by such board with the public officers with whom such deposit shall have been made that such bid and all rights which may have been acquired thereunder have become null and void and of no effect; and said rights, privileges and franchises shall be again sold by such board, subject to all the provisions of this act regulating such sale. The terms of sale shall require the construction to be begun within a certain time to be specified in said terms of sale and to be finished within a certain time thereafter to be specified therein, and may prescribe the time within which operations of the same shall be begun and finished. The said terms of sale may reserve to the board the power to extend the times for the commencement and completion of the construction of said railway or of the operations of the same, if in its discretion the said board deems such extension to be for the best interests of the city. In case the corporation formed for the

purpose of constructing said railway shall fail to begin or finish the construction within the times for those purposes respectively limited, all the rights, privileges and franchises of such corporation to maintain and operate said railway shall be forfeited and upon such forfeiture being adjudged by the court in a suit brought for that purpose in the name of the mayor, aldermen and community and the state of New York or such other appropriate title of such city or by said board of rapid transit railroad commissioners, then the said board shall have the power to advertise and resell said rights, privileges and franchises and so much of the road as shall have been constructed by such corporation. Such suit shall have preference over all other cases in all courts; and the proceeds of such sale shall be applied first to the payment of the expenses of the resale and then to the discharge of any liens which may have been created upon such property and the balance shall be paid over to the said corporation. The terms of sale must provide for the organization by the purchaser or purchasers of such rights, privileges and franchises of a corporation to exercise the same, to construct, maintain and operate such rapid transit railway or railways with the powers and subject to duties and liabilities granted or imposed by this act. The said terms of sale must also specify the amount of the capital of any such corporation and number of shares of capital stock which such corporation shall be authorized to issue, the percentage to be paid in cash by the subscribers for such shares, the maximum amount of the bonded indebtedness which such corporation be authorized to incur and which may be secured by mortgage upon its property and franchises and the rates of fares and freights which such corporation may charge and collect for the carriage of persons and property. But the rate of fare for any passenger on said railway from any point on the same northward or southward within the state of New York shall not exceed five cents under any provision of this act. The said board may, if it considers that the public interests require it, reject all bids and readvertise the said rights, privileges and franchises for sale, with the same or different terms of sale, as often as it may deem necessary in the interests of such city, and shall finally accept that bid which under all circumstances in its opinion is most advantageous to the public and such city; and

no bid shall be accepted without the concurrent vote of six members of the board. The terms of sale must contain all the provisions required by this act to be inserted in the original terms of sale. Such sale may be adjourned from time to time at the discretion of the board. All sales of such rights, privileges and franchises shall be made for a definite term of years; but at the expiration of a term, if sold for a term of years, shall not impair any mortgage or other lien upon the property of such corporation or the rights of any creditor or creditors of such corporation; provided, however, that nothing herein contained shall be so construed as to extend the contract for which such rights, privileges and franchises are sold.

Act of April 14, 1902, C. & G. General Statutes of New York, page 738, Section 38. **Operation of tunnel railroads.**—The said board of rapid transit railroad commissioners may also from time to time, as in this section hereinafter provided, grant the right or rights, privileges or franchises to enter into contract or contracts upon application to said board of any railroad corporation owning and actually operating a railroad wholly or in part within the limits of the city in which the said board has power to act, or of any railroad corporation now or hereafter incorporated and for the purpose so declared in its articles of association of constructing and operating a tunnel railroad or railroads in the said city to be connected with any railroad or railroads within the state of New York or any adjoining states and thereby forming a continuous line for the carriage of passengers and property between a point or points within any of the point or points without the said city.

GAS AND ELECTRIC CORPORATIONS.

C. & G. Statutes of New York, Volume 3, page 4238, Section 60. Three or more persons may become a corporation for manufacture and supplying gas for lighting streets and public or private buildings of cities, villages and towns in this state or for manufacturing and using electricity for producing light, heat and power and in lighting streets, avenues, public parks and places and public and private buildings within this state or for two or more of such purposes by making, signing, acknowledging and filing a certificate stating the name of the corporation, its objects, the amount of its capital stock, the term of its

existence not to exceed fifty years, the number of shares of which the stock shall consist, the number of directors not less than three and more than thirteen, the names and places of residence of the directors for the first year and the names of the towns, villages, cities and counties in which the operation of the corporation are to be carried on, and thereupon the persons who have signed the same, their associates and successors shall be a corporation by the name stated in the certificate.

POWERS OF ELECTRIC AND GAS CORPORATIONS.

C. & G. Statutes of New York, Volume 4, page 979, Section 61, Act of April 15, 1902. **Use of streets and highways by.**—If incorporated for the purpose of supplying gas for light, to manufacture gas and to acquire by purchase or otherwise natural gas and sell and furnish such quantities of gas as may be required in each city, town and village named in its certificate of incorporation of lighting the streets and public or private buildings or for other purposes, and to lay conductors for conducting gas through the streets, lanes, alleys, squares and highways in each such city, village and town with the consent of the municipal authorities thereof and under such reasonable regulations as they may prescribe; and such municipal authorities shall have power to exempt any such corporation from taxation on their personal property for a period not exceeding three years from the organization of the corporation. Any corporation authorized under any general or special law of this state to manufacture and supply gas shall have the like powers and privileges.

Page 4239, Section 62, § 2. **Use of streets, etc., by.**—If incorporated for the purpose of using electricity for light, heat or power or to carry on a business of lighting by electricity or using it for heat or power in cities, towns and villages within this state and the streets, parks and public places therein and public and private buildings therein, and for the purposes of such business to generate and supply electricity, and to make, sell or lease all machines, instruments, apparatus and other equipment therefor and to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes or other fixtures in, on, over and along streets, avenues, public parks and places of such cities, towns and villages for conduct-

ing and distributing electricity, with the consent of the municipal authorities thereof and in such manner and under such reasonable regulations as they may prescribe.

§ 4. **Use of streets, etc., for steam pipes.**—Any corporation organized under this article or under any general or special law of this state for the purpose of using electricity for light, heat or power in cities other than the first class, towns or villages in this state, may have and acquire the following additional powers, to-wit: The power of supplying steam to consumers from the central station or stations through pipes laid in the public streets of the cities, towns and villages in this state, and for that purpose to lay, maintain and construct suitable pipes and conduits or other fixtures in, on and under the streets, avenues, public parks, and places of such cities, towns or villages and under such regulations as they may prescribe.

WATERWORKS CORPORATION.

C. & G. General Statutes of New York, page 4246, Article 7, Section 80. Seven or more persons may become a corporation for the purpose of supplying water to any of the cities, towns or villages and the inhabitants thereof in this state by executing, acknowledging and filing a certificate stating the name of the corporation, amount of its capital stock, the number of shares into which it is to be divided, the location of its principal office, the number of its directors not less than seven, the names and places of residence of the directors for the first year, and name of the cities, towns and villages which it is proposed to supply with water; that the permit of the authorities of such cities, towns and villages herein required has been granted. The postoffice address of each subscriber and the number of shares he agrees to take in such corporation, the aggregate of which shall be at least one-tenth of the capital stock and ten per cent of which shall be paid in cash to the directors. At the time of filing there shall be annexed to the certificate and as a part thereof a permit signed and acknowledged by a majority of the board of trustees of the village in case an incorporated village is to be supplied with water, and in case a town or part thereof not within an incorporated village is to be so supplied, by supervisor, justice of the peace,

town clerk and highway commissioners thereof, or a majority of them, and in case a city is to be supplied with water by such other board or set of officers as perform the duties of water commissioners and have charge of the water supply for such city, authorizing the formation of such corporation for the purpose of supplying such city, village or town with water, and the affidavit of at least three of the directors of the amount of capital stock herein acquired has been subscribed and paid in cash.

Section 82. **Every such water corporation shall have the following additional powers:**

1. To lay and maintain several pipes and hydrants for delivering and distributing water in any street, highway or public place of any city, town or village in which it has obtained the permit required by Section 80 of this article.

2. To lay several water pipes in any streets or avenues or public places of any adjoining city, town or village to a city, town or village where such permit has been obtained.

3. To cause such examinations and surveys for its proposed water works to be made as may be necessary to determine the proper location thereof and for such purpose by its officers, agents or servants to enter upon any lands and water in the city, town or village for the purpose of making such examinations or surveys, subject to liability for all damages done.

Section 84. Any corporation organized under this article shall have the right to acquire real estate or any interest therein necessary for the purpose of its incorporation and the right to lay, relay, repair and maintain conduits and water pipes, with connections and fixtures, in, through or over the lands of others; the right to intercept the flow of water from the lands of riparian owners and from persons owning or interested in any waters, and the right preventing the flow and drainage of noxious or impure waters from the lands of others into its reservoirs or sources of supply. If any such corporation which has made a contract with any such town, city or village or with any of the inhabitants thereof for the supply of pure and wholesome water, as authorized by Section 81 of this article, shall be unable to agree upon the terms of purchase of any such property or rights it may acquire the same by condemnation. But no such corporation shall have power to take or use water

from any of the canals of this state or any canal reservoirs as feeders of any streams which have been taken by the state for the purpose of supplying the canals with water.

CITIES OF SECOND CLASS.

Act of April 28, 1904, C. & Gilbert's General Law, 140. No ordinance shall be passed authorizing the sale or lease of city real estate or of any franchise belonging to or under the control of the city, except by a vote of three-fourths of all the members of the common council.

Franchise.—No franchise shall be granted or operated for a period longer than fifty years.

The council may, however, grant to the owner or lessees of an existing franchise under which operations are being actually carried on such additional rights or extensions in the street or streets on which the said franchise now exists upon such terms as the interests of the city may require, with or without sale and advertisement, as the common council may determine. Provided, however, that no such grant shall be operative unless subsequently approved by resolution of the board of estimate and apportionment and also by the mayor.

NORTH CAROLINA.

CONSTITUTION.

Article 1, Section 7. **Exclusive privileges.**—No man or set of men are entitled to exclusive or separate emoluments or privileges from the community, except on consideration of public service.

Section 31. **Perpetuities and monopolies.**—Perpetuities and monopolies are contrary to the genius of a free state and ought not to be allowed.

Article 2, Section 12. **Notice of private law.**—The general assembly shall not pass any private law unless it shall be made to appear that thirty days' notice to pass such a law shall have been given under such direction and in such manner as shall be provided by law.

Article 8, Section 1. Corporations.—Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, except where in the judgment of the legislature the object of the corporation would be obtained under general laws.

Section 4. Cities and towns.—It shall be the duty of the legislature to provide for the organization of cities, towns and incorporated villages and restrict their powers.

Chapter 6, Public Laws 1901, page 67. Street railways.—Street railways may be organized under Chapter 16 of the code, but no such railway shall be operated in any city or town without the consent of the municipal authorities thereof.

Proceedings for the condemnation of land of any easement of interest therein for the use of a street railway shall be as is prescribed in Chapter 49 of the code for condemning lands for the use of railroads.

Section 1952 of the code shall not apply to street railways.

Act of March 9, 1903, page 956. Electric companies.—Sections 2007, 2008, 2009, 2010, 2011, 2012 of the code of 1883, as amended by Chapter 64 of the public laws of 1889, are amended by inserting the words “or electric power or lighting” after the words “telephone or telegraph” wherein same are used.

Section 2007. Right to use highways by electric companies.—Giving to any company organized under the laws of this state or any other state the right to construct, maintain and operate lines of telegraph along any railway or other public highway in the state.

This section applies to electric companies. See section preceding this.

Section 2008. Electric companies.—They shall have the power to contract with any person or any corporation and owners of any lands for any franchises or easements therein.

Section 2009. Electric companies.—They shall have the right of way over the lands, privileges and easements of other persons and corporations, and the right to erect poles thereon.

Act of March 3, 1903, page 574. Amendment to Chapter 6, Public Laws 1901. Railways.—The term “electric railway company” wherever used shall be held to include railways operated either by steam or electricity, or by whatever motive power,

which are used and operated as means of communication between different points in the same municipality and between points in municipalities lying adjacent or nearer to each other or between the territory lying contiguous to a municipality in which is the home office and such railways may carry and deliver freights. It shall not operate a line extending in any direction more than fifty miles from the municipality in which is located its home office.

Note.—It will thus be seen that under Section 2007 as amended by an act of March 9, 1903, electric light and power companies have the right to use the public streets and the local highways; Franchises for street railways, electric light, water and gas may be granted by special act from the legislature or they may be conferred upon the respective companies under the general law by a municipality. The municipalities in this state seem to be incorporated by special act, hence we must look to their charters to see just what powers they have, to grant such franchises.

As a rule cities, towns and villages have full power and authority to grant such franchises, but under the constitution it seems to be opposed to perpetual and exclusive franchises, hence a franchise should have some time limit expressed therein, otherwise it might be declared by the court to be a mere license revocable at pleasure of municipal authorities.

Exclusive franchises seems to be repugnant to the laws of this state. See *Yadkin Navigation Co. vs. Benton*, 2 Hawks 713; *Washington Bridge Co. vs. Com. Beaufort*, 87 North Carolina page 491.

NORTH DAKOTA.

CONSTITUTION.

Article 1, Section 20. **No special privileges or immunities** shall ever be granted which may not be later revoked or repealed by legislative assembly, nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

Article 2, Section 69, § 20. **Exclusive privileges.**—The legislature shall not pass special laws granting to any corporation,

association or individual the right to lay down railroad tracks or any special or exclusive privilege, immunity or franchise whatever.

§ 33. **No special law** shall be passed incorporating any city, town or village.

Section 70. **No special law** can be passed where the general law can be made applicable.

Article 6, Section 130. **General laws.**—The legislature shall provide by general laws for the organization of municipal corporations and restricting their powers.

Article 7, Section 131. **Charters not to be granted by special laws.**—No charter of incorporation shall be granted, changed or amended by special law, except in case of such municipal, charitable, educational, penal or reformatory company as may be under the control of the state, but legislature shall provide by general laws for the organization of all corporations to be created, and all such laws passed shall be subject to future repeal or alteration.

Article 7, Section 136. Charters existing and granted for special or exclusive privileges to corporations bona fide organized at the time of the adoption of this constitution shall be valid.

Article 7, Section 139. **Grants to public service companies.**—No law shall be passed by legislature granting the right to construct and operate a street railway, telegraph, telephone or electric light plant within a city, town or incorporated village without requiring the consent of the local authorities having control of the city or highway proposed to be occupied for such purpose.

CITIES.

Code 1899, Article 4, No. 2148, Section 7, page 572.—**City councils** have power to lay out, establish, open, alter, widen, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, wharfs, public parks and public grounds and vacate the same.

No. 2148, Section 9. **Council to regulate use of streets.**—They may regulate the use of such streets, alleys, sidewalks, wharfs, public parks and public grounds and provide for the lighting of same.

Section 13. **Laying pipes and stringing wires.**—And they may regulate the opening of such streets and highways and public grounds for the laying of gas or water mains and pipes of any company organized under the laws of this state for the purpose of manufacturing illuminating gas or electricity to supply cities and inhabitants thereof with same, and such company shall have the right by consent of the city council subject to existing rights, to erect gas or electric works and lay pipes or string wires on poles in the streets or alleys in any city in the state, subject to such regulations in such city as they may by ordinance prescribe.

Section 24, page 573. **Laying tracks.**—They may permit, regulate or prohibit the locating, constructing or laying of tracks of any horse or other street railway in any street, alley and public place, but such permission shall not be for a longer time than twenty years.

Section 68, page 576. **Frontage consent for street railway.**—The city council shall have no power to grant the use of right to lay down any railroad track in any street of the city to any steam, electric or horse railway company, except upon a petition of the owners of the land representing more than one-half of the frontage of the street or so much thereof as is sought to be used for railroad purposes.

Section 74. **City may purchase,** erect, lease, rent, manage and maintain any system or part of a system of water works, hydrants and supply of water, telegraph fire signals and fire apparatus.

VILLAGES.

Code of 1899, Section 2365, § 20, page 628. **Franchises.**—Villages may authorize the construction and maintenance of street railway, water mains and water pipes and gas mains and gas pipes along and through the streets and alleys within the corporate limits of such village and to grant franchises and rights to persons, associations or corporations for such purpose and to regulate the same.

Code 1899, page 643, Section 2459. **Municipal water works.**—All cities, towns and villages in this state having a population of 1,000 inhabitants or more are authorized to purchase, erect, lease, rent, manage and maintain any system of water works, hydrants and supply of water, telegraph fire signals

and fire apparatus, providing that such lease or contracts for same, which shall stipulate for an annual payment greater than a levy of seven mills on the day of the assessed valuation of the association, city or municipality, shall not be authorized until the contract providing therefor shall first have been submitted to the vote of the people and ratified by a majority of the voters therein.

Section 2460. The last section shall not be construed to modify or affect the power of any city, town or village where the charter of such city, town or village shall expressly give to such municipality the power to lease, rent or maintain the plants for such purposes.

CORPORATIONS.

Section 3154, Code of 1899, page 74. **Term of existence.**—Corporations for mining, manufacturing and other industrial pursuits may be formed, but the term of existence thereof shall not exceed twenty years.

Gas, water and electric light companies may be organized under the general incorporation laws for a period of twenty years, and such general laws may apply to the organization of street railway companies.

We can find no general law applicable to the organization of street railways in this state, unless it can be organized under Section 3154 of the code.

The code refers the organization of railways to that portion of the act which is applied to steam railroads.

The legislature recognizes street railways by giving towns and cities the right to permit, regulate or prohibit same in the streets and that the use of such streets for same shall not be for a longer period than twenty years. Excepting as to street railways, the constitution and statutes are silent as to the time for which franchises may be granted. Whether or not the franchise can be granted perpetually the courts have not determined.

It seems clear under the terms of the constitution that an exclusive grant cannot be given, and under Article 1, Section 20, it indicates that a perpetual franchise cannot be given, because it provides that no privilege or immunity shall be granted which cannot be later revoked or repealed.

OHIO.

CONSTITUTION.

Article 13, Section 1. **Special laws.**—The general assembly shall pass no special act conferring corporate powers.

Section 2. **Corporations.**—Corporations may be formed under general laws, but all such laws may from time to time be altered or repealed.

Section 5. **No right of way** shall be appropriated to the use of any corporation until full compensation therefor be first made in money or first secured by the deposit of money to the owner, irrespective of any benefit from any improvements proposed by such corporation, which compensation shall be ascertained by a jury of twelve men in a court of record and shall not be prescribed by law.

Section 6. **Cities and villages.**—The general assembly shall provide for the organization of cities and incorporated villages by general law and restrict their powers of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the use of such power.

STREET RAILWAYS.

Bates' Annotated Statutes, 1536-185, Section 30. **Street railway route, publication of bids, consents, term, release of obligations.**—Nothing mentioned in Section 2501 of the Revised Statutes of Ohio shall be done; no ordinance or resolution to establish or define a street railway route shall be passed and no action inviting proposals to construct and operate such railroad shall be taken by the council; and no ordinances for the purpose specified in Section 2501 of the Revised Statutes of Ohio shall be passed until public notice of the application therefor has been given and the clerk of the corporation once a week for a period of at least three consecutive weeks in one or more of the daily papers if there be such, and if not, then in one or more weekly papers published in the corporation. And no such grant as mentioned in Section 2501 of the Revised Statutes of Ohio shall be made except to the corporation, individual or individuals that will agree to carry passengers upon such proposed railroad at the lowest rates of fare and shall have previously obtained the written consent of a majority of the property

holders upon which street or part thereof on the line of the proposed railroad represented by the foot front of the property abutting on the several streets on which such road is proposed to be constructed. Provided that no grant nor renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty-five years from the date of such grant or renewal; and after such grant or renewal of a grant is made whether by special or general ordinance, the municipal corporation shall not during the time of such grant or renewal release the grantee from any obligation or liability imposed by the terms of such grant or renewal.

Bates' Annotated Statutes, 1536-183, Section 29. **Street railway franchises.**—The right so to construct or extend such railway as provided in Section 3437, Revised Statutes of Ohio, within or beyond the limits of a municipal corporation can be granted only by the council thereof by ordinance, and the right to construct such railway within or beyond the limits of an unincorporated village can be granted only by the county commissioners by order entered on their journal; and after said grant or renewal of any grant shall have been made, whether by a general or special ordinance, or by order of the county commissioners, neither the municipal corporation, nor the county commissioners shall release the grantee from any obligations or liabilities imposed by the terms of such grant or renewal of a grant during the term for which said grant or renewal shall have been made. Provided, that no authority shall be given by such municipal or county authorities to occupy the track, whether single or double, or other structure of any existing street railways for more than one-eighth of the entire distance between the termini of the route as actually constructed, operated and run over, and the company or individual to whom such grant is made; except, however, in granting permission to extend existing routes, such cities and companies shall have the same powers they have under the laws and contracts now existing; and that no extension of any street railroad located wholly without such city or of any street railroad wherever located, which has been or shall be built in pursuance of the right obtained from any source or authority other than a municipal corporation shall be made within

the limits of such city except as a new route and subject to the provisions of Section 2501 of the Revised Statutes of Ohio and Section 30 of this act.

Section 2501, 1336-184 Revised Statutes. **Terms and conditions for construction and operation; renewal of grant.**—No corporation, individual or individuals shall perform any work in the construction of a street railroad until application for leave is made to the council in writing and the council by ordinance shall have granted permission and prescribed the terms and conditions upon and the manner in which the road should be constructed and operated and the streets and alleys which shall be used therefor, but the council may renew any such grant at its expiration upon such conditions as may be considered conducive to the public interest.

Section 2505, 1536-188, R. S. **City or village may grant extension of street railroad.**—The council of any city or village may grant permission by ordinance to corporations, individuals or companies owning or having the right to construct any street railroad to extend their tracks subject to the provisions of Sections 3437, 3438, 3439, 3440, 3441, 3442 and 3443 in any street or streets where council may deem such extension expedient and beneficial to the public; and when any such extension is made the charge for carrying of passengers on any street railroad so extended and its connections made with any other road or roads by consolidation under existing laws shall not be increased by reason of such extension or consolidation. And, further, provided that when any such changes in or extensions on existing routes are made so as to run in whole or part over and along existing tracks already belonging to such company or companies it shall be necessary to secure and file the consents to such changes or extensions of the owners of the property abutting on the streets on which such existing tracks are located; provided further that nothing herein contained shall be construed to authorize the extension of the track or route of one street railway company over those of any other street railway company otherwise than in the manner already provided by law except by agreement of both such companies.

No extension in length of franchise; notice of ordinance; consents necessary, when.—Provided that nothing herein

contained shall authorize the extension of existing street railway routes or any portion thereof over and along existing tracks or portion thereof for a longer period than the terms for which the original franchise for such road or routes existing at the time of the passage of this act are granted.

Provided, further, that no resolution or ordinance provided for such extension or change of route or routes or changes or revision of system of transfers shall be passed until public notice of the pendency of such resolution or ordinances shall have been given in one or more of the daily newspapers published in said municipal corporation, if there be such, and if not, then in one or more newspapers of general circulation in said municipal corporation for a period of at least three consecutive weeks and provided, further, that no change or extension of any existing route shall be granted over any street or streets now occupied by street railway tracks unless the consent of the majority of the owners of property abutting on such street or streets shall have been first obtained as now by law required. Whenever any street railway route or routes shall have been changed under agreement as provided in the preceding section of this act no subsequent change of said route or routes shall be made within a period of five years thereafter.

Rights of abutting owners.—Nothing herein contained shall be construed to impair the rights of abutting property owners where unnecessary or additional burdens are placed upon the streets by the operation of any grants herein authorized to be made and nothing in this act or any part thereof shall be construed to impair or injure the rights of any corporation now using the streets of any municipality in the state under authority of any law now or heretofore in force; but all unexpired grants of rights or privileges heretofore made by any municipality in accordance with the provisions of any statute or act of the General Assembly existing at the time when they were made and which have been extended and where money has been expended in good faith on account thereof, are hereby regranted for such unexpired portion of the respective routes of the original grants in accordance with the terms and conditions of the same; any law or part of law to the contrary notwithstanding.

Section 3437. Where street railways may be constructed.—Street railways with single or double tracks, side tracks, turn-outs, may be constructed or extended within or without or partly within and partly without any municipal corporation or unincorporated village and offices and depots and other necessary buildings for such railways may also be constructed.

Section 3439. Written consent of owners of more than one-half of feet front necessary.—No such grant shall be made until there is produced to council or the commissioners, as the case may be, the written consent of the owners of more than one-half of the foot value of the land and lands abutting on the street or public way on which it is proposed to construct such railway or extension thereof; and the provisions of Sections 2501 and 2503 and 2505 inclusive, so far as they are applicable, shall be observed in all respects whether the railway proposed is an extension of a road or the granting of a new route; provided that this act shall apply to any county containing a city of the second grade of the second class.

Section 3439a. When consents cannot be withdrawn.—Nothing contained in Section 2507 and 3409 shall permit any person owning property abutting on any street along, in or over which a street railroad is about to be constructed to withdraw his or their consent after the ordinance granting the right to construct and operate a street railway shall have been read a second time; provided, that a period of at least 30 days has lapsed since the first reading of such ordinance in the council or other body authorized to make the grant; and where the abutting property holder has been heretofore compensated for his consent or has heretofore withdrawn his consent notwithstanding thirty days has not elapsed since the first reading the ordinance after the right to construct and operate a street railroad has been read a second time in the council or other body authorized to make the grant and the grant has been made by the council or other public body to the company or individual pursuant to such consents, the grant shall not be held invalid by reason thereof.

Section 3440. When property may be appropriated for such railways—Toledo-Cuyahoga county.—When the council or commissioners make any such grant, the company or person to

whom the grant is made may appropriate any property necessary therefor when the owner fails to expressly waive his claim to damages by reason of the construction and operation of the railway; and in any city of the third grade of the first class any person, persons or company which is authorized to construct and is operating a street railroad may appropriate any property necessary for the purpose of occupying and using under Section 3438 any existing railway track or tracks, subject to the limitations of such section and for not more than one-eighth of the entire distance between the termini of the route as actually constructed, operated and run over of the appropriating company or person at the time appropriation proceedings are begun, such appropriation to be made in the mode and manner provided for the appropriation of property in part 3, title 2, chapter 8, of the Revised Statutes; and in counties containing cities of the second grade of the first class the power to appropriate may be exercised as herebefore provided for the purpose of constructing a street railway on a highway occupied by a turnpike or plank road company when the person, persons or company authorized to construct such street railway cannot agree with such turnpike or plank road company upon the terms and conditions upon which such highway may be occupied and when such appropriation will not necessarily interfere with the reasonable use of such highway by such turnpike or plank road company; provided nothing herein contained shall affect the rights of property owners to give or withhold their consent concerning the right of way for street railways upon any street or road.

Section 3441. The authority controlling the public road and owner of land must consent.

Act of April 7, 1904, page 106, Section 1. **Appropriation of private property.**—That whenever it is deemed necessary by a majority of the directors of any domestic or foreign corporation owning or operating or that may hereafter own or operate a street railway in any municipality in this state to appropriate private property in such municipality in order to avoid dangerous or difficult curves or grades or unsafe or unsubstantial grounds or foundations or to extend or shorten its railway line or to provide additional land on which to extend its power plant, then such corporation may appropriate so much of such

private property as may be necessary for the said extension of such power plant or the construction, operation and maintenance of the tracks, poles, supports, cables and necessary appliances for such railway other than power houses, machine shops, stations or sub-stations in the mode and manner and subject to the provisions provided for the appropriation of property in part 3, title 2, chapter 8, of the Revised Statutes of Ohio; provided, however, that this act shall not be construed to amend or repeal any existing laws relating to the extensions of street railway lines with any municipalities.

Section 2. For the purpose hereinbefore provided, such corporation may change the location of any portion of its railway whether hereto made or hereafter made; and for the purpose of making any such change such corporation shall have all the rights, powers and privileges to enter upon private lands and make surveys necessary to affect such changes as fully as railroad companies are permitted to do under laws of this state.

Section 3443, § 1. **Street railway route in Cincinnati made valid.**—That in all cases where in cities of the first grade of the first class the council has heretofore by ordinance established any street railroad route and declared the conditions upon which a street railroad should be constructed and operated and due publication of a notice has been made calling for proposals to construct and operate such street railroad to be awarded to the corporation, individual or individuals that should agree to carry passengers thereon at the lowest rates of fare, and the proposals of a bidder who obtained and filed the written consents of the owners of the majority of the feet front of property on each street on the line of the route has been accepted thereon and an ordinance passed granting to such bidder the franchise, and such bidder has accepted the same and entered into a written contract with such municipality to construct and operate such street railroad such ordinance, grant, contract and franchise shall be deemed and held in all respects to be valid and binding notwithstanding the submission of another bid offering to carry passengers on such route at a lower rate of fare who failed to file the written consent of any property owners.

Note.—This section unconstitutional so far as it seeks to validate a grant to one not the lowest bidder.—*Knorr v. Miller*, 5 C. C., 609-623.

Section 3443, § 8. **Street railways may carry packages, express matter, U. S. mail and freight outside municipalities.**—Companies incorporated under Section 3236 of the Revised Statutes of Ohio for such purposes may construct, maintain and operate electric street railroads or street railroads using other than animal power as a motive power for the transportation of passengers, packages, express matter, U. S. mail, baggage and freight upon the highways in the state outside of municipalities or upon private rights of way.

Section 3443, § 9. **Occupancy and use of public highways.**—All such companies shall have power to occupy and use for their tracks, cars and necessary fixtures and appliances the public ways outside of cities and villages with the consent of the public authorities in charge of or controlling such highways and with the written consent of a majority measured by the front foot, of the property holders abutting on each of such highways.

Section 3443, § 10. **Interurban railroad given right of eminent domain.**—Interurban railroads outside of municipalities have the same power and right of eminent domain as is now possessed by steam railroad companies.

3443-14, Section 1. **Mansfield.**—The council of any city which at the last federal census had or which at any subsequent federal census may have a population of not less than 13,400 nor more than 13,600 may grant permission to any corporation, individual or individuals to construct and operate an electric power and light plant in connection with any street railroad operated by them and may prescribe the terms of constructing and operating same and such cities may renew any such grant at their expiration upon such conditions as may be conducive to the public interests.

3443-17, Section 2005c. **Use of street railway tracks to operate cars of another railroad company.**—Whenever any railway company is incorporated and organized under the laws of this state for the purpose of building, acquiring, owning, leasing, operating and maintaining railroads or railways to be operated by electricity or other motive power from one municipal corporation or point in this state to any other municipal corporation or point in this state, it shall have the authority to make the arrangement or agreement with any railway company or

companies owning or operating any street railway or railways in any such municipal corporation or corporations and said street railway company or companies shall have authority to make and enter into such arrangement or agreement with said railway company whereby the passenger cars of such railway company may be run and propelled over and on the track or tracks of such street railway company or companies for such compensation and upon such terms as may be agreed upon in the same manner and upon the same conditions and for the same length of time as the cars owned and operated by said street railway company or companies are operated in such municipal corporation or corporations. The said cars of such railway company shall while there running and being operated over and along the track or tracks of such street railway company or companies in any such municipal corporation be entitled to all the privileges, subject to all the obligations enjoyed and imposed by and upon the cars in any such municipal corporation and shall be operated only by the same motive power with which the cars of such street railway company or companies are and may be operated. Such arrangement or agreement when authorized by not less than two-thirds in amount of the stockholders of each company proposing to enter into such arrangement and agreement ratified by a majority of the directors and executed by the proper officers thereof shall give to such railway company full authority to operate its said cars on the tracks of said street railway company or companies in such municipal corporation or municipal corporations; provided, that it shall not be necessary for such railway company in case it uses in any such municipal corporation or municipal corporations only the tracks of the street railway company or companies owning or operating the street railway or railways within such municipal corporation or municipal corporations to obtain any additional grants, franchises or rights, except by arrangement or agreement with said street railway company or companies; provided, further, that the fare charged by said railway company for transporting passengers within the municipal corporation or municipal corporations shall not be greater than that fixed in the franchise or franchises held or owned by such street railway company or companies; and where there is a public park or cemetery on the line of such

street railway and within one mile of and owned by such municipal corporation such company shall for such fare so transport passengers to and from said park and cemetery the same as though they were within the limits of such corporation.

3443-18, R. S., Section 2505a. **Right to lease and purchase electric light property.**—Any corporation or company maintaining and operating a street railroad or a railroad operated by electricity may lease or purchase all the property, real, personal or mixed, and all the rights, franchises and privileges, of any company organized for the purpose of supplying electricity and natural or artificial gas or both electricity and natural or artificial gas for power, light, heat or fuel purposes and which has been engaged in such business in whole or in part in any municipality within this state, the latter being hereby vested with corresponding power to let or sell upon such terms and conditions as may be agreed upon between the corporation and company.

ELECTRIC LIGHT AND POWER COMPANIES.

Section 3471a. The provisions of this chapter so far as same may be applicable except Section 3461 shall apply also to any company organized for the purpose of supplying public and private buildings, manufacturing establishments, streets, alleys, lanes, lands, squares and public places with electric light and power or automatic package carrier, and every such company shall have the same powers except those given by said section 3461 and be subject to the same restrictions as are herein prescribed for magnetic telegraph companies. Provided, however, that in order to subject the same to municipal control alone no person or company shall place, string, construct or maintain any line, wire, fixture or appliance of any kind for conducting electricity for lighting, heat or power purposes through any street, alley, lane, square or land of any city, village or town without the consent of such municipality; and this inhibition shall extend to all lines above and below the surface of any such public grounds and places as well as along the surface thereof; and this inhibition shall not be applicable to any rights which have heretofore been received and exercised through proceedings of any probate court. Any person or company violating any portion of the

inhibition aforesaid shall be deemed guilty of a misdemeanor and shall upon conviction thereof be fined in any sum not less than \$100 and not more than \$500. The means thus created for enforcing said inhibition shall be held to be only accumulative to any other lawful means by way of injunction or otherwise, and this act shall apply to actions and causes of action or proceeding named in Section 79 of the Revised Statutes, except such as may be pending in error and not on appeal in any circuit court of the state.

3471-3, Section 1. **Powers of electric light and power companies.**—A company organized for the purpose of supplying electricity for power purposes and for lighting the streets and public and private buildings of any city, village or town may manufacture, sell and furnish the electric light and power required therein for such and other purposes and such companies may construct lines for conducting electricity for power and light purposes through the streets, lanes, alleys, squares and public places of such city, village and town by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires, with the consent of the municipal authorities of the city, village or town and under such reasonable regulations as they may prescribe. Provided, that all wires erected and operated under the provisions of this act shall be covered with a waterproof insulation and said poles, piers, abutments and wires shall be so located and arranged as to not interfere with the successful operation of existing telegraph and telephone wires.

3471-6, Section 1. **Subways and conduits for electric wires in Cincinnati.**—Any company organized for the purpose of constructing subways, laying pipes and operating underground conduits in any city of the first grade of the first class and maintaining electric cables, wires and other conductors for conveying electric current for any purpose, may construct such subway and underground conduits through the streets, avenues, sidewalks, alleys, lanes, lands, squares and public places of such city and maintain such subways and conduits, together with necessary amount of holes, junction boxes, connection boxes, fixtures, pipes and connections to and from such subways and conduits and all such other necessary fixtures and appliances for placing and safely car-

rying electricity and electrical conductors beneath the surface of the streets, avenues, sidewalks, alleys, lands, lanes, squares and public places of any such city.

Section 1536-581, Section 2491. **Municipal corporations may contract for gas and electricity and plants therefor, subject to section 3551, as follows.**—The municipal authority of any city or village, or the trustees of any township in which any gas or water company is organized may contract with any such company for lighting or supplying with water the streets, lands, lanes, squares and public places in such city, village and town and township; but no such company shall go into operation in any city or village where such a corporation has been already formed or is hereafter formed until after the question of authorizing such operation has been submitted to the qualified voters of such city or village and authorized to be organized.

Note.—This section applies only to the formation of another company. *Gas Co. vs. Lima*, 4 C. C. 22.

1536-567, Section 2478. **Regulating price of gas and electricity.**—The council of any city or village in which electric light companies, natural or artificial gas companies or gas light or coke companies may be established or into which their wires, mains and pipes may be conducted are hereby empowered to regulate from time to time the price which said electric lighting, natural or artificial gas or gas or coke companies may charge for electric light or for gas for lighting or fuel purposes furnished by such companies to the citizens, public houses and buildings, streets, alleys, lanes, wharves and landing places, and such electric lighting, natural or artificial gas or gas light companies shall in no event charge more for electric light or natural or artificial gas furnished to such corporation or individuals than the price specified by ordinance of such council; and such council shall also have power to regulate and fix the price which such company shall charge for rent of their meters.

Act of April 23, 1904, Section 2479, Laws of Ohio. **Minimum not to be changed during term agreed upon.**—In case the council fixes the price for which it shall require any company to furnish electricity or either natural or artificial gas to the citizens or public buildings or for the purpose of lighting the

streets, alleys, avenues, wharves, landing places, houses and other places or for other purposes for the period not exceeding ten years and the company or person so to furnish such electricity or gas shall by assent and authority by written acceptance filed in the office of the clerk of the corporation, it shall not be lawful for the council to require such company to furnish electricity or either natural or artificial gas as the case may be at a less price during the period agreed on not exceeding ten years as aforesaid; and for all ordinances or resolution heretofore passed by any municipal corporation fixing a minimum price for furnishing electricity or other natural or artificial gas as aforesaid which has been assented to by any person or company by written acceptance filed in the office of the clerk of the corporation shall be as valid and such price shall be as binding as if this act had been in force or any such price was in terms so fixed and accepted.

Act of April 23, 1904, Section 3550a, page 258. **Electric companies may furnish gas and gas companies may furnish electricity.**—Every corporation organized under the laws of this state to manufacture and supply artificial gas for light, heat and power purposes or for any of such purposes and every corporation organized under the laws of this state to manufacture and supply electricity for light, heat and power purposes or for any of such purposes, shall in addition to all powers heretofore conferred have power, subject, however, to statutory provisions in force relating to the granting of franchises by municipalities for either of said purposes at the time of the granting of the franchise to manufacture and supply electricity and artificial gas respectively for light, heat and power purposes and to make all contracts and do all things necessary and convenient for furnishing same for both public and private objects.

GAS AND WATER COMPANIES.

Chapter 7, Section 3550. **Powers of gas and water companies.**—A company organized for the purpose of supplying gas for lighting the streets and public or private buildings of a city, village or town or township may sell and furnish the gas required therein for such and other purposes and a company organized for the purpose of supplying the inhabitants

of any city, village or town or township with water may sell and furnish any quantity of water required therein, and such companies may lay conductors for conducting gas or water through the streets, lanes, alleys and squares in such city, village, town or township with the consent of the municipal authorities of the city, village or town or with the consent of the trustees of the township and under such reasonable regulations as they may prescribe.

Section 3550a. **Cincinnati.**—In cities of the first grade of the first class, gas companies and gas light and coke companies organized under the laws of this state for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings and places shall have in addition to the powers already conferred, all the powers, privileges and franchises of electric light companies to construct, maintain and operate electric light plants and stations with all fixtures and appliances necessary for furnishing electricity, light, heat and power to such cities and the inhabitants thereof; and such companies may lease or purchase, maintain and operate existing electric light plants and stations, together with the fixtures, appliances, equipments and other property thereunder belonging, including the capital stock, rights and franchises of any existing company or companies, person or persons owning the same.

Note.—This section is enlarged by the act, April 23, 1904, so that in all cities, towns and villages gas companies may furnish electricity. See last paragraph, subdivision electric light and power companies.

Section 3551, 3552. **Contracts with public authorities and extension of pipes.**—The municipal authorities of any city or village, or the trustees of any township in which any gas or water company is organized, may contract with any such company for lighting or supplying with water, any such company shall go into operation in any city or village where such a corporation has been already formed or is hereafter formed until after the question of authorizing such operation has been submitted to the qualified voters of such city or village and authorized by ordinance. A gas company in any city or village may extend its pipes used for conveying gas to the various localities and inhabitants of such city or village to any point or

place within the vicinity of such city or village outside the corporation limits thereof; but the right of way must be obtained from the corporate or other authorities or person having control of the places to be affected by such extension.

* As to regulation of price, see under heading electric light. Section 2478.

1536-574, Section 2485. **Exclusive privileges prohibited.**—It shall not be lawful for any council to agree by ordinance, contract or otherwise with any person or persons for the construction or extension of gas works for manufacturing and supplying the corporation or its inhabitants with gas which shall give or continue to any person or persons making such agreement with the council the exclusive privilege of using the streets, alleys, lands, lanes and places for the purpose of conveying gas to the corporation or the citizens therein or which shall deprive the council of the right to designate the kind of meter to be used for the correct measurement of the gas furnished under such agreement and to provide for inspecting or regulating the same or to specify the exact quality of the gas being furnished and reserve to the council the right to enforce and exact compliances with such specification under such rules as the council may prescribe; nor shall the council make any such agreement, which shall not secure to the council the right to purchase such extension of such contract or agreement.

OKLAHOMA TERRITORY.

CITIES OF THE FIRST CLASS.

Section 346 of Revised Statutes of Oklahoma, 1903. **Cities and towns become municipalities.**—All cities, towns, villages or counties having a population of over 2,500 inhabitants and residing upon land plotted into lots and blocks, upon taking effect of the act become municipal corporations.

Section 348. **Exercise of powers.**—The powers granted to and conferred upon cities of the first class shall be exercised by the mayor and council of such cities.

Section 393. **Power of council and the way.**—The city council shall have power to open, widen, extend and otherwise improve any street, avenue, alley or lane, to create, open and

improve any new street, avenue, alley or lane and also annul, vacate and discontinue the same or to grant to any other public use whenever deemed necessary or expedient.

Section 398. Franchises—gas and electric companies in street, and duration of grants.—The council may provide for and regulate the lighting of the streets, the erection of lamp posts and the council shall have power to make contracts with and authorize any person, company or association to erect gas or electric works in said city, and give any such person, corporation or association the privilege of furnishing gas or electricity to light the streets, lanes and alleys of said city for any length of time not exceeding twenty-one years. But no such grant shall be so conditioned as to prevent the council from granting to other persons or companies or corporations the right to use the streets for lighting purposes and all such grants shall be subject at all times to reasonable regulations by ordinance as to the use of the streets and price to be paid for gas or light.

Section 405. Private property may be taken for public use or for the purpose of giving the right of way or other privileges to any railroad company, or for the purpose of establishing market houses or market places, or for any other necessary purposes, but in every case the city shall make the person or persons whose property shall be taken or injured thereby, adequate compensation therefor to be determined by assessment of five disinterested householders of the city who shall be selected and compensated as may be prescribed by ordinance and who shall in the discharge of their duties act under oath faithfully and impartially to make the assessment to them submitted; and in determining the same said householders shall consider the benefit resulting to, as well as the damages sustained to the owner of the property so taken except in condemnation of rights of way or for private corporations. Appeals may be taken to the district court from the decision of such householders in the same manner and within the same time as from judgment of the justice of the peace.

Act of March 16, 1903, page 141. Street railway.—Corporations may be formed under the general railway laws of the Territory of Oklahoma which shall have the power to use electricity for the propulsion of their railway, provided that no

third rail or similar device for transmission of such power other than for return circuit shall be used.

Street railways on streets, lighting, etc.—A corporation with the consent of the authorities of any city or town in the Territory of Oklahoma, located upon or along its lines, may construct a system of street railway upon such streets and upon such terms and conditions as may be agreed upon between such corporation and such city or town, and may also accept lighting contracts with such cities or towns to supply the cities or towns or the inhabitants thereof with light or electric current for power, or such railways or other such corporations may also acquire by purchase or consolidation plants, franchises, contracts, good will and other property of any existing street railway or lighting company.

All licenses or franchises heretofore granted to any street railway company authorizing the construction and operation of an electric railroad in any city of the first class of the Territory of Oklahoma and which have not become forfeited or lapsed by their terms are hereby ratified and confirmed.

TOWNS AND VILLAGES.

Act of 1903, page 107, Section 512, § 20. **Street railways and gas, water and electric companies may use streets.**—The board of trustees of a village or town are empowered to authorize the construction and maintenance of street railways, water mains and water pipes and gas main and gas pipes, electric light and telephone wires on or through the streets and alleys within the corporate limits and to grant franchises and rights to persons or corporations for such purposes and regulate the same, but no exclusive right shall be granted for any such purpose. The street may be granted on the same terms to all companies desiring to compete with each other in the business of furnishing gas, electricity, telephone accommodations, electric light, water or street railway accommodations and all shall be subject to reasonable regulations by ordinances, which ordinances may be altered and changed at the pleasure of the council.

As there is no limitation fixed for the duration of a franchise to use the streets by street railway companies, it would seem that such a franchise would be granted for at least a time during the life of the corporation.

OREGON.

CONSTITUTION.

Article 1, Section 20. **Special privileges.**—No law shall be passed granting to any citizen or class of citizens privileges and immunities which upon the same terms shall not equally belong to all citizens.

Article 11, Section 2. **Corporations** may be formed under general laws and shall not be created by special laws except for municipal purposes. All laws passed pursuant to this section may be altered, amended or repealed but not so as to impair or destroy any vested rights.

CITIES AND TOWNS.

Code of Oregon, Vol. 2, Chapter 4, § 2711. **Powers of.**—The mayor and aldermen shall compose the common council of any such city or town organized under this act, and at any regular meeting thereof, shall have power to provide for lighting the streets and furnishing such city or town and inhabitants thereof with gas or other lights within or without the city limits as may be necessary or convenient therefor, and may allow the use of the streets and alleys of the city, to any person, company or corporation who may desire to establish works for supplying the city and inhabitants thereof, with such water or lights, upon such reasonable terms and conditions as the council may prescribe. To permit, allow and regulate the laying down of tracks for street cars and other railroads, and upon such streets as the council may designate and upon such terms and conditions as the council may prescribe. And allow and regulate the erection and maintenance of pole or poles and wires for telegraph, telephone, electric light or other purposes, upon or through the streets, alleys or public grounds of the city or town; for the laying down or repairing gas and water mains; for building and repairing sewers and the location of gas or other lights. To preserve the streets, side and cross walks, buildings and public grounds from injury and prevent the unlawful use of the same and to regulate their use. To fix the maximum rate of wharfage, rates for gas or lines for carrying passengers

on street railways, and water rates; and no such city or town shall ever be deprived of the right through its common council of regulating and adjusting any such rates so that the same shall be reasonable for the services rendered at least once in a period of two years.

TELEGRAPH AND ELECTRIC LINES.

Chapter 6. § 4748. **Electric lines on streets and highways.**—The right and privilege is hereby granted to any person, persons or corporation to construct, maintain and operate telegraph lines, telephone lines and lines and wires for the purpose of conveying electric power or electricity along the roads, highways and streets of the state, or cross rivers or over any lands belonging to the state, free of charge, and over lands of private individuals as hereinafter provided and such person or corporation may erect the necessary fixtures therefor; provided that the provisions of this section shall not apply to any highway or street within any incorporated city or town and provided further that the county courts of the several counties through which telegraph or telephone lines may be constructed shall have power and authority, to designate the location upon such roads and highways outside of cities and towns, where such fixtures may be erected, and may order the location of any such fixture or fixtures to be changed when such court deems it expedient, and any fixture erected or remaining on a different location upon such highway than that designated in any order of such county court, shall be deemed a public nuisance and may be abated accordingly.

Act of February 18, 1903, page 111. **Rights of eminent domain of electric companies as to private property and streets and highways.**—Any corporation organized for the purpose of building, maintaining and operating a telegraph or telephone line for the transmission of messages for hire, or for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes, and for furnishing electric lights or power for hire, shall have the right to enter upon lands within the State of Oregon for the purpose of examining, locating and surveying the line thereon, doing no unnecessary damage thereby and may appropriate and condemn such lands, not exceeding 25

feet in width as may be necessary or convenient for any such purpose. The proceedings for the appropriation and condemnation of the state lands shall be the same as provided by law for the appropriation and condemnation of lands for railway purposes; and when it shall be necessary or convenient in the location of any poles or line of wire herein mentioned, to appropriate any part of any public road, street or alley or public grounds, the county court of the county in which such road, street, or alley or public grounds are situate (unless the same be within the corporate limits of a municipal corporation) is authorized to agree with the corporation locating the poles or line of wires upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation and if such parties shall be unable to agree thereon such corporation may condemn so much thereof as may be necessary and convenient in the location and construction of such poles or line of wires. Provided, however, that nothing herein contained shall be construed to impair the rights heretofore required by any such company in any public road, street, alley or public grounds whether within the corporate limits of any incorporated town or otherwise or to authorize the county, city or town to interfere with or to remove any poles or wires already located thereon unless the same become public nuisances and interfere with public travel. And any agreement or grant heretofore made by the county court or by any municipal corporation and the right to build or maintain any lines or poles and wires for the purpose aforesaid in any county or any incorporated city or town within such line of poles and wires is already located is hereby confirmed and such lines of poles and wires may be maintained and operated so long as they are kept in repair and do not interfere with the convenient use of the highway for travel.

The only statutes in this state giving railway companies the right to use public highways outside of cities are the following:

Code of Oregon, Vol. 2, Chapter 2, § 5074. **Location of lines by all corporations by entering on private property.**—A corporation organized for the construction of any railway, macadamized road, plank road, canal or bridge or of the conducting of water by mains of pipe laid under the surface of the ground shall have the right to enter upon any land between the termini

thereof for the purpose of examining, locating and surveying the line of such road or canal, water pipes or the side of such bridge, doing no unnecessary damage thereby.

§ 5077. **County court may agree to location of road.**—When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street or alley or public grounds the county court of the county wherein such road, street, alley or public ground may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation, and if such parties shall be unable to agree thereon such corporation may appropriate so much thereof as may be necessary and convenient in the location and construction of said road.

Note.—The Supreme Court of this state say that Section 5077 applies to steam railroads only and has no reference to corporations operated as street railways propelled by electricity or horse power for the convenience of the transportation of passengers. *Thompson-Houston Co. vs. Simon*, 20 Ore., page 61.

But the same court in the case of *Paquet vs. Mt. Tabor Street Railway Company*, 18 Ore., page 233, states that railroad corporations authorized to locate, construct and operate its road on the county road of any county under an agreement with the county court of the county in which the road is situated in accordance with Section 5077, cannot be enjoined from proceeding with its enterprise at the suit of the owner of lands abutting on the county road. The last decision would indicate that the court construed the Section 5077 as applying to street railways but as the question was not directly raised in that case, it is doubtful whether this section does apply to street railway companies, because it refers back to the road or railway mentioned in § 5074 which the Supreme Court has held to apply to steam railways only.

We can find no other statutes than the ones referred to above, and without them it is doubtful whether the public authorities have rights to grant the use of highways in cities

and towns for the use of street railways, unless it be by cities and towns incorporated under special charters.

Exclusive and perpetual franchises are not allowed to be granted.

In this state cities as a rule are incorporated by special law, hence their charters must be looked to for their powers to grant franchises to public utility companies.

PENNSYLVANIA.

CONSTITUTION.

Section 1, Article 17. **No ex post facto law** or law impairing the obligation of contracts or making irrevocable any grant or special privileges or immunities shall be passed.

Article 3, Section 7. **No special laws** shall be passed incorporating cities, towns or villages, or changing their charters or for creating corporations, or amending, renewing or extending the charters thereof, or granting to any corporation, association or individual any special or exclusive privilege or immunity to any corporation, association or individual the right to lay down a railroad track.

Article 15, Section 9. **Street railway.**—No street passenger railway shall be constructed within the limits of any town, borough or township without the consent of the local authorities.

ELECTRIC LIGHT, HEAT AND POWER COMPANIES.

Act May 8, 1889, page 136, Section 1. The Subdivision 11, Class second, corporations for profit in an act entitled "An act providing for the incorporation and regulation of certain corporations approved the 29th day of April, 1874," was amended so as to read as follows: "The manufacture and supply of gas or the supply of light, heat and power by the means of electricity and the supply of light, heat and power to the public by any other means.

Right to use streets and highways.—Every such corporation shall have the authority to supply light, heat and power or any of them by electricity to the public in the borough, town, city or district where it may be located and to such persons, partnerships and corporations residing therein or adjacent thereto, with the right to enter upon any public street, lane, alley or highway for such purpose, to alter, inspect and repair its system of distribution, provided that no company which may be incorporated under the provisions of this act shall enter upon any street in any city or borough of this commonwealth until after the consent of such entry of the councils of the city or borough in which such street may be located shall have been obtained.

Any association of persons or corporations heretofore engaged in the business of supplying light, heat and power or any of them by electricity under color of a charter, upon accepting the provisions of this act by writing, under seal of the company, filed in the office of the secretary of the commonwealth and filed therewith its letters patent or charter, shall thereupon be entitled to and vested with all the privileges, immunities, franchises and powers conferred by this act upon corporations created under the same, and all property rights, easements and privileges belonging to said associations and corporations, are ratified, approved and confirmed as if the same had been originally acquired by and under the authority of this act.

Act of March 19, 1903, page 34. **Contract with and lease of other systems.**—That it shall and may be lawful for corporations for what purpose soever formed and lawfully using electrical current within the commonwealth, to enter into contracts with each other, for the use of the same poles, wires and conduits, or for the purpose and sale of electric current, or for the lease and operation of each other's systems, upon such terms and conditions as they may agree upon. That nothing in this act contained shall be construed to give any company, any rights to erect or maintain poles, wires or conduits upon any street or road not already so occupied, unless the consent of the local authorities shall have been first obtained.

WATER AND GAS COMPANIES.

Act of June 2, 1877, page 310. **Power of eminent domain.**
—Companies incorporated under the provisions of this statute for the supply of water to the public or for the manufacture and supply of light, heat and fuel or any of them by any process of manufacture shall, unless otherwise provided by this act, from the date of the letters patent creating same, have the powers and be managed, governed and controlled as hereinafter provided.

Where any such company shall be incorporated for the supply of light, heat and fuel or any of them by any process of manufacture it shall have authority to supply such heat, light and fuel, or any of them, to the territory named in its articles of incorporation, (which shall never cover more than a single county) and to such persons, partnerships and corporations residing therein or adjacent thereto, as may desire the same, and they shall have the power of eminent domain, to appropriate property to enable it to acquire that which is necessary for its plant, (whether the same be in the county named in its articles of association or elsewhere) with the right to enter upon any public street, lane, alley or highway for such purpose, to alter, inspect and repair its system of distribution; provided that no company shall enter upon any street in any city or borough of the commonwealth until after the consent to such entry of the councils of the city or borough in which such street may be located, shall have been obtained; and the said right of eminent domain shall be exercised in the mode prescribed and according to the provisions of the 41st section of this act.

Act of May 16, 1889, page 226. **Appropriation of water.**—Where such companies shall be incorporated for the supply of water to the public, or for storing and transportation or supply of water and water power for commercial and manufacturing purposes, they shall have power to appropriate so much of the water from the rivers, creeks, canals, water rights and easements within or without the limits of the city, borough or place in which said company may by its charter be located, as may be necessary for its purposes; and all damages done thereby shall be ascertained, recovered and

paid as provided for in the 41st section of the act of which this is a supplement; and it is further authorized and empowered by itself, its agents, engineers and workmen with its and their tools, wagons, beasts of burden to enter upon such lands and enclosures, streets, lanes, alleys, roads and highways and bridges as may be necessary to occupy and to obtain materials for the construction of said works and to occupy, ditch and lay pipes through the same and from time to time to repair, subject to such regulations in regard to streets, roads, lanes and other highways as the council of such borough, town, city or district may adopt for the protection and convenience of public travel over the same.

Act of June 24, 1895, page 267. **Exclusive franchises of gas companies.**—The right to have and enjoy the franchises and privileges of such corporations for the manufacture of gas for light only, shall be an exclusive one within the district or locality covered by its charter, and no other companies shall be incorporated for the manufacture of gas for light only to the public, until the said corporation shall have from its earnings realized and divided among its stockholders during five years, a dividend equal to eight per centum upon its capital stock. And provided that an exclusive privilege for the manufacture of gas for light only shall not be an exclusive one in case of a corporation existing prior to the 28th day of April, one thousand eight hundred and seventy-four which has accepted the provisions of the act of April 29th, one thousand eight hundred and seventy-four.

Act of July 2, 1895, page 425. **Water companies may furnish electric power and use streets and highways for that purpose.**—That corporations organized under the laws of this state for the purpose of supplying water power to the public, may develop electric power for commercial purposes by means of water power, and shall have the authority to supply current and power to the public, individuals, firms and corporations, at such prices as may be agreed upon, and shall have the right and power to enter upon any public road, street, lane, alley or highway for such purposes and to alter, inspect and repair its system of distribution, provided that no such company shall enter upon any street or alley in any city, borough and township in this commonwealth until

after the consent to such entry of the councils of the townships or borough or supervisors thereof in which such street or alley may be located shall have been obtained.

A gas company may secure electric light franchises by amendment of its charter under an act of June 2, 1897, but in such case the charter or the amendment must specifically define the territory to be supplied.

See Conshohocken Gas Co., 5 Pa. C. C. R. 585; Penna. Telephone Co., 2 Chester Co. Reporter 129.

STREET PASSENGER RAILWAY COMPANIES.

Act of June 7, 1901, page 514. **Articles of association, exclusive privileges.**—Any number of persons not less than five may form a company for the purpose of constructing, maintaining and operating a street railway for public use and conveyance of passengers by any power other than locomotive, upon any street or highway upon which no track is laid under any existing charter and in constant daily use for the transportation of passengers, at the time of the application by another company for a charter to use such street, with the privilege of occupying so much of any street, highway or bridge as is hereinafter provided; but whenever a charter after the approval of this act shall be granted to any corporation, no other charter to build a road on the same streets, highways, bridges or property shall be granted to any other company within the time during which by a provision of this act the company first securing the charter has the right to commence and complete this work. Provided that the consent of the local authorities shall be promptly applied for and shall have been obtained within two years from the date of the charter. The charter shall state, among other things, the length of the road, the streets, highways and bridges upon which the said railway is to be laid and constructed, showing also the circuit of the route.

Section 4. **Extension of branches.**—Any company incorporated under this act, shall have authority to construct such extensions and branches, as it may deem necessary, and to do which, it shall name the streets, highways and bridges on which each extension and branch is to be laid and constructed, and a copy of the minutes of such company con-

taining such authority, shall be recorded in the office of the recorder of deeds for the proper county and the exemplification of the said record, shall be filed in the office of the secretary of the commonwealth, and no right to actually construct the same shall vest until after thirty days from the filing of such exemplification; provided that no extension or branch, shall be constructed on any street or highway upon which the track is laid and in constant daily use for the transportation of passengers under existing charters, at the time of such exemplification.

Section 14. May use tracks of other street railways.—Any passenger railway company incorporated under this act, shall have the right to use such portion of the single or double tracks or the streets, highways and bridges occupied by any other passenger railway company or companies incorporated under this or any general or special acts, and already laid and in constant daily use, and all of any streets, highways and bridges included in the route of any other company or companies when the tracks are not laid down or not in constant daily use or are only in temporary use, as it may require, either to construct a circuit upon its road or upon any of its branches or extensions, or connect its road with any and all its branches and extensions, or with the road of any other passenger railway company. The length of tracks to be used of any other road and already laid down shall be used only with the consent of the local authorities of the city, borough or township in which the same are laid and in no event shall exceed 2,500 feet in length of the street or highway, in which measurement no bridge to be crossed or approaches thereto shall be included, and shall have the further right to use all bridges and approaches thereto in use by any other company in addition to the 2,500 feet of track hereinbefore provided for. Said company shall have the right to replace at its own expense such tracks with new tracks and appliances necessary for the proper operation of the cars of both companies over and upon said tracks. Before any such use occurs, compensation shall be paid or secured to any person or corporation injured thereby, which shall be arrived at and paid in the manner as is provided by said act.

Section 15. Consent of local authorities; route must be continuous.—No street passenger railway shall be constructed by any company incorporated under this act within the limits of any city, borough or township without the consent of the local authorities thereof or shall any railroad company be incorporated hereunder which shall not have a continuous route, including branches and extensions, from the beginning to the end, including connections made from each of its branches and extensions or they with each other, and including the use of the branches and the approaches thereto and the 2,500 feet authorized to be used under Section 14 as amended by provisions of this act.

Act of June 7, 1901, page 514. Must obtain local consent within two years and complete in five years.—Any company which does not within two years from the date of incorporation make formal application to the local authorities of the proper city, borough or township for leave to occupy and use the streets, highways and bridges which by its charter it is authorized to occupy and use, and any such company has or hereafter does obtain legislative and municipal consent to occupy and use any streets, highways and bridges and does not therewith diligently proceed to occupy and use the same, and does not begin work within two years after such consent shall be obtained, and complete this road as provided by its charter, within five years thereafter, and constantly daily use the same thereafter for the transportation of passengers shall be deemed to have abandoned the right to use such streets, highways and bridges and the same may be occupied by any other company duly chartered and obtaining consent so to do.

Act of 1878, page 38. Cities of first class may consent to the extension of street railways for 600 feet on a street where another railway is located.

Act of April 15, 1903, page 200. The Forestry Reservation Commission are authorized to give to street railway companies the privilege to construct, maintain and operate their lines and railway over, along and upon public highways which lies or borders on any aforesaid reservation now owned or hereafter acquired by the commonwealth.

Act of April 28, 1903, page 335. Electric wires under-

ground.—Cities of the third class shall have the right to define by ordinance a reasonable district within which all electric wires shall be placed underground owned either by municipalities or corporations owning such wires or by corporations organized for the purpose of laying such conduits and renting space therein.

Act of May 8, 1876, Section 1. Use of motive power upon passenger railways.—That passenger railways in any and all cities of the first class in this commonwealth may use other than animal power in the carriage of passengers in their cars whenever authorized so to do by the councils of such city, and the limitations contained in any of the charters of passenger railway companies restricting them to the use of horse power be and the same are hereby repealed. Provided further, that the councils of such city shall not exercise any of the powers conferred by this act, except such railway company shall reduce their fares to five cents for a single ride on said railway.

Act of May 15, 1895, Section 1. Street railway companies may contract with motor-power companies for construction, operation, etc.—That any street passenger railway company heretofore or which may hereafter be incorporated in this commonwealth, under general or special laws, whose line or lines are not on township or country roads, is hereby authorized to sell or to lease or to lease and to sell its property and franchises to any traction or motor power company incorporated under the laws of this commonwealth, not operating on township or county roads, upon such terms as shall be agreed upon. Any such railway company may also contract with any such traction or motor power company or companies for the construction upon and along its line of railway, and that of any companies operated or controlled by it, whose line or lines are not on township or country roads, of motors, cables, electric or other apparatus and appliances for the payment of the price thereof by bonds to such extent as may not exceed its issued full paid capital stock secured, if it shall be deemed advisable, by mortgages of its franchises and property. Contracts may also be entered into between such companies for the operation of the lines of railway of such railway companies by

such traction or motor power companies as operators, lessees or otherwise, by means of cables, electric and other appliances and fixtures, and also by means of any motive power which could lawfully be used upon the line owned, leased or operated by said railway company; provided that nothing herein contained shall be construed as permitting the propulsion of cars along the line of any street passenger railway by means of steam; and provided further, that no traction or motor power company shall enter upon any of the streets or highways of any city or borough for the construction thereon of any of the appliances or fixtures necessary to operate any street passenger railway company by cables, electricity or mechanical device or power until after the consent of the municipal or local authorities shall be given to an entry upon such streets or highways for the purposes of such construction.

Act of June 7, 1901, Section 4. **Street railway companies may abandon any portion of route.**—Any company incorporated under the provisions of an act entitled "An act to provide for the incorporation and government of street railways in this commonwealth," approved May fourteenth, Anno Domini one thousand eight hundred and eighty-nine, is hereby authorized and empowered, with the consent of the local authorities of any city, borough or township within which said railway is located, to abandon any portion of its road, without prejudice to its right to operate or to complete and operate, the remaining portion of its railway by appropriate action by its board of directors, with the approval of a majority in value of its stockholders, upon the filing of a copy of such action, certified under the hands of its president and secretary and the seal of the company, in the office of the secretary of the commonwealth, and also with the proper local authorities. All streets, highways and bridges, or parts thereof, the use and occupation of which is thus abandoned, or which shall be deemed abandoned as hereafter set forth, and any other street, highway or bridge, or part or parts thereof, the use and occupation of which has heretofore been abandoned or discontinued, or which is only in temporary use, or which is not occupied by any railway because of the prohibition contained in any act of

assembly or any ordinance of councils, or because of any contract or agreement by and between any railway and the commonwealth of Pennsylvania, or any railway and the local authorities of any city, borough or township, or the commonwealth and any of the citizens thereof, or because of any ordinances of the councils of any city, borough or township, may thereafter or hereafter, with the consent of the local authorities of such city, borough or township, but not otherwise be occupied and used by any railway company chartered under this act, or by the company which has abandoned or discontinued the use thereof. Before such use shall be made of any such street, highway or bridge, compensation for the use thereof shall be made or secured to any persons or corporations having vested rights under any such act of assembly, ordinance, contract or agreement and injured thereby. Such compensation shall be made or secured in the manner herein provided for by the amendment to the fourteenth section of an act entitled "An act to provide for the incorporation and government of street railway companies of this commonwealth," approved the fourteenth day of May, Anno Domini one thousand eight hundred and eighty-nine.

Section 5. That all acts or parts of acts inconsistent herewith shall be and are hereby repealed.

ELEVATED AND UNDERGROUND PASSENGER RAILWAY COMPANIES.

Act of June 7, 1901, page 523. Any number of persons not less than five may form a company for the purpose of construction and operation of a passenger railway either elevated or underground or partly elevated or partly underground, for the transportation of passengers, and with power and authority to contract for and locally gather, carry and distribute the mails of the United States, and with power to construct such portion thereof upon the surface as may be reasonably necessary for terminals or connections between the underground and elevated sections thereof; provided, however, that the surface so occupied shall not exceed 2,500 feet in length in any one place which said railways may be constructed and operated upon, over, under, across, through and along any street, highway or bridge in this

commonwealth upon which no railway incorporated under this act is already erected or constructed and in constant daily use for transportation of passengers, or authorized to be erected under this act, and for which permission to erect and construct same has been obtained from the local authorities and the city, borough or township in which the same is to operate within two years, with the privilege of occupying so much of the said streets, highways or bridges mentioned in their charter as may be necessary for the erection and operation of said railway for public use, in the conveyance of passengers by motive power, other than steam, as may be adopted from time to time, and said companies may build and operate on, over, under, across, through and along streets and highways and bridges upon which passenger railways are constructed or authorized to be constructed on the surface of the street and may use and occupy the surface to the extent of 2,500 feet, as herein provided.

Right of eminent domain.—Corporations created under this act for the purpose of constructing railways and the necessary stations and approaches thereto have the right of eminent domain on, under, over, across, through and along any street, highway or bridge or on, over, under, across, through and along lands and tenements of private ownership and may locate, fix and determine such route for the railway, as the board of directors may deem expedient on, under, over, across, through and along any street, highway, bridge or private property, not, however, passing over any burying ground or place of worship, and thereon may erect, construct and operate a railway with such stations and approaches as they may deem necessary, and may occupy, take and acquire all lands and buildings which may be necessary for the said railway stations and approaches or any needful building or appurtenances convenient for the construction and maintenance of the same. Corporations must make compensation for all property taken, injured or destroyed. If the parties claiming compensation of the company shall not be able to agree as to the amount of compensation, then the damages shall be assessed and paid as is provided in the act.

Use of streets, highways and bridges.—Every such company

has the authority to use so much of the streets, highways and bridges of the commonwealth immediately adjacent to their tracks as may be necessary and proper for the erection of stations or the proper, necessary and convenient approaches thereto.

Act of March 25, 1903, page 52. **Branches and extensions.**—Such corporations may construct branches and extensions, but in that case shall first file in the office of the secretary of the commonwealth the resolutions of the board of directors approved by the stockholders, giving the route of such branches and extensions, and every such company is authorized and empowered, with the consent of the local authorities of any city, borough or township within which said railway is located, to abandon any portion of its road without prejudice to its right to operate or complete and operate the remaining portion of its railway by appropriate action of its board of directors, with the approval of a majority of its stockholders, and upon filing a copy of such action duly certified by the president and secretary under the seal of the company in the office of the secretary of the commonwealth and also with proper local authorities.

Every company incorporated under this act shall have the right to use any part or all of the tracks or railway of any other company incorporated under this act, with the consent of such other company to be expressed by resolution of its board of directors ratified by a vote of a majority in value of the stockholders of such other company and such use may be exclusive or in conjunction with such other company as the said companies shall agree; and companies incorporated under this act shall have the right to merge their several rights, privileges and franchises with other companies. Whenever two or more roads shall be so merged the commencement of work in good faith on any part of the route of any such merged roads shall be held to be the commencement upon all the merged lands or roads and with the compliance with the provisions herein as to the time within which work must be commenced; provided, however, that the work shall be completed within five years upon all of the said merged roads unless the time for such completion shall be extended by proper local authorities and

the city, borough or township within which the said roads are located.

Act of June 7, 1901, Section 12. Time for construction.—Any company proposing to construct a railway or any branch or extension thereof, under the provisions of this act, shall in good faith commence the construction thereof within two years after the consent of the proper local authorities of the city, borough or township within which the same is located shall have been obtained; and the same shall be completed within five years thereafter, unless the time shall be extended by the authority aforesaid. Whenever a charter shall be granted to any corporation to build a road as provided by this act, no other charter to build a road on, over, across, through or along the same streets, highways, bridges or property shall be granted to any other company within the time during which, by the provisions of this act, the company first securing the charter has the right to commence and complete its work. Provided, that the consent of the local authorities shall be promptly applied for, and shall have been obtained within two years from the date of the charter.

Section 14. May construct road over turnpikes.—Any company incorporated under this act shall have power, by its officers and servants, to construct and operate its road as authorized by this act on, over, under, across, through and along any turnpike or turnpikes, and to use the same for its general business; and, in addition to the space so occupied by its tracks, may occupy so much of the space on, over, under, across, through and along such turnpikes as may be necessary for the erection of the proper stations and approaches thereto; provided, however, that it shall make or secure compensation to the owner or owners of such turnpike for such occupation and use in the mode provided for in section eight hereof.

Section 15. May bridge or tunnel streams; change of route.—If in the construction of any railway incorporated under this act it shall become necessary to cross any river or rivers, creeks or water courses within this state, the said company shall have power and authority to bridge or tunnel the same. The route and method of construction, or both, as

described in the charter of any company incorporated under this act may be changed, with the consent of the local authorities of the proper city, borough or township; but, in that case, if the company shall accept such change, a resolution of the board of directors, setting out the change and the authority therefor, shall be filed in the office of the secretary of the commonwealth. Such change shall only be made when ratified and approved by a majority of the stockholders voting at a meeting called for the purpose of considering such change.

Act of June 19, 1901, Section 1. **Corporation may build either an elevated or underground railway, or both.**—That any company chartered to build either an elevated or an underground railway, under the provisions of the act entitled "An act to provide for the incorporation and government of passenger railways, either elevated or underground, or partly elevated and partly underground, with surface right," approved June seventh, one thousand nine hundred and one, shall have power and is hereby authorized to build either an elevated or an underground railway, or both an elevated or underground railway, over the route described in their charter, having first obtained the consent of the local authorities of the city, borough or township through which the said railway is located.

Section 2. All acts of assembly, or parts of acts, inconsistent herewith be and the same are hereby repealed.

MOTOR POWER COMPANIES.

Act of May 15, 1895, Section 1. **Traction company may operate several systems of street railways as one system.**—That from and after the passage of this act it shall be lawful for any traction or motor power company or street passenger railway company, owning, leasing, controlling or operating different lines of street railways of different companies, to operate as a general system so much of said different lines as occupy streets, and from time to time to lay out such new routes or circuits over the whole or any part of such street or streets occupied by the tracks of the different companies which it thus owns, leases, controls or operates and upon such routes or circuits to run cars for such dis-

tances and in such directions as will, in the opinion of the operating company, best accommodate public travel; provided that nothing in this act contained shall be construed to give any traction or motor power company, or street passenger railway company, any authority to run its cars upon the tracks of any street passenger railway company not owned, leased, controlled or operated by it without the consent of such company, or the consent of the traction or motor power company owning, leasing, controlling or operating such company; provided, however, that such consent by any traction or motor power company leasing, controlling or operating such street passenger railway company shall not be given for any longer term than is covered by the agreement for such lease, control or operation.

Act of May 15, 1895, Section 1. **Sale and lease of property and franchise.**—That any traction or motor power company heretofore or hereafter incorporated under the laws of this commonwealth is hereby authorized to sell or to lease, or to lease and to sell its property and franchises, as well as those owned, as those leased, operated or controlled by it, including so much of any line or lines of passenger railways owned, leased or controlled by it as is located upon street or streets, to any other traction or motor power company incorporated under the laws of this commonwealth, upon such terms as may be agreed upon. Such traction or motor power company may also enter into contracts with other traction or motor power companies incorporated under the laws of this commonwealth for the operation of lines of railway and property owned, leased, operated or controlled by it; provided that nothing herein contained shall be construed as authorizing any traction or motor power company to acquire, lease or operate so much of the line of any other motor power company as occupies any township, borough or county road.

RHODE ISLAND.

CONSTITUTION.

Article 4, Section 17. **Creation and control of corporations.**—Hereafter the general assembly may provide by general law for the creation and control of corporations; provided, however, that no corporation shall be created with the power to exercise the right of eminent domain or to acquire franchises in the streets and highways of towns and cities except by special act of the general assembly, upon a petition for the same, the pendency whereof shall be notified as may be required by law.

CITIES AND TOWNS.

General Laws of 1896, page 261, Act of May 29, 1891. **Franchises, how obtained and term of.**—Any town or city may pass ordinances or make contracts granting rights and franchises in, over or under the streets and highways in such towns or cities for any corporation created by general assembly for the purpose of distributing water or for the purpose of producing, selling and distributing current of electricity to be used for light, heat or motive power, or for the purpose of manufacturing, selling and distributing illuminating or heating gas, or for the purpose of operating street railways by any motive power, or for the purpose of operating telephones, for a term not exceeding **twenty-five years**; to erect, lay, construct and maintain for the purpose for which such corporation is created, poles, wires, pipes, conduits, rails or cables, with necessary and convenient appurtenances as may be required for the conduct of the business of such corporation in, over or under the streets of such town or city; provided, however, that no grant or exclusive rights or franchises for either of the purposes aforesaid shall be made by any city or town wherein at the time a corporation created for the same purpose or a person duly authorized by law to use the streets for such purpose shall be in actual use and enjoyment of such rights, except to such corporation or person already carrying on business in such

city or town. And provided further, that whenever in any city or town more than one corporation shall at the time be in actual use and enjoyment of portions of the streets and highways for either of the purposes aforesaid, no exclusive right or franchise shall be granted to either without the consent of the other, and provided further that no such grant shall prevent any town or city from permitting any person or corporation to use such streets or highways for any of the purposes aforesaid in order to connect and serve any two or more estates owned by such person or corporation.

Compensation for exclusive rights.—Every corporation which shall accept exclusive rights or franchises granted by ordinance or contract under this chapter shall make and render to the treasurer of the town or city granting same, on or before the 30th day of January, April, July and October in every year, returns verified by oath of its president or treasurer of the gross earnings of such corporation within such town or city for the period of three months next preceding the first day of January, April, July and October in the same year, and shall at the time pay to such town or city treasurer in full payment for the rights and franchises aforesaid a special tax upon said gross earnings at a rate not exceeding three per centum upon the gross earnings of such corporation within said town or city in such year. If such tax is not paid, the town or city treasurer may collect and recover of such corporation, as other taxes are collectible, double the amount of the special tax shown to be had by its last preceding quarterly return of such corporation. In case any such corporation shall do business in more than one town or city and it shall be unable to ascertain the amount of its gross earnings in such town or city, separately from actual costs kept thereof, its return shall state the gross earnings of its entire business and the length of its wires, pipes, mains or tracks in the streets or highways of each town or city and its gross earnings shall be taken to be the proportion of the whole gross earnings which the length of its pipes, wires, mains or tracks on the streets and highways of such city or town bears to the total length of its wires, pipes, mains or tracks on streets and highways.

May regulate poles, wires, tracks, etc.—Cities and towns may from time to time make reasonable rules and regulations and orders controlling the extent and quality of construction and service to be maintained by the corporation to which such rights are granted, and prescribing the location and arrangement of its tracks, poles, wires or conduits and their appurtenances. If any regulation shall seem to any corporation to be unreasonable, such corporation within thirty days after the same has been passed may file its petition in equity in Appellate division of the Supreme court, praying for a decision of the question whether such regulation or order is or is not reasonable in the premises and thereupon the court, after notice to the city or town, shall proceed to hear and determine the matter according to the course of equity and their decision and decree therein shall be final and binding.

Charge for use of streets.—No city or town shall make any charge to any such corporation for the use of its streets except under and in provision of this chapter; provided that any city or town may require that any street railway company shall continue to conform to any existing requirements as to paving and keeping in repair such streets and highways.

CORPORATIONS.

General Laws of 1896, page 600, Section 18. **Street railways, paving, etc.**—Every corporation which maintains or uses railroad tracks on any street or highway in a town or city shall be liable to keep and maintain in good order and repair, including paving and regular repairing wherever necessary, that portion of any street or highway occupied by its railroad and 18 inches outside of its rails; provided that the character of such paving, repairing and repaving shall be such as is from time to time fixed by the town or city councils of the respective towns; and provided that nothing herein contained shall relieve any railroad corporation from the payment of any sum of money which it is required by law to pay to any town or city for the use and occupancy of the streets and highways in such town or city.

General Laws of 1896, page 527. Corporations to acquire

franchises on streets or highways of towns and cities shall not be incorporated under the general laws.

The power to grant the right to corporations to use public streets and highways must be by special legislative act, and the power cannot be delegated to the municipal corporation by the legislature.

SOUTH CAROLINA.

CONSTITUTION.

Article 3, Section 34. **No special law** shall be passed to incorporate cities, towns or villages or change or extend the charter thereof or to incorporate educational, religious, charitable, social, manufacturing or banking institutions not under control of the state. In all other cases where the general law can be made applicable, no special law shall be passed.

Article 8, Section 1. **Municipalities.**—The general assembly shall provide by general law for the organization and classification of municipal corporations. The powers of the different classes of municipal corporations shall be defined so that no such corporations shall have any powers or be subject to any restrictions other than all corporations of the same class.

Article 8, Section 4. **Street railway, gas and electric companies.**—No law shall be passed by the general assembly granting the right to construct and operate a street or other railway, telephone, telegraph or electric plant or to erect water or gas works without first obtaining the consent of the local authorities in control of the streets and public places to be occupied for any such or like purposes.

Section 5. **Cities may purchase plants.**—Cities and towns may acquire by construction and purchase, and may operate water works, systems and plants for furnishing lights, and may furnish water and light to individuals, firms and corporations for reasonable compensation, provided that no con-

struction or purchase shall be made except upon a majority vote of the electors in said cities and towns who are qualified to vote on the bonded indebtedness of said cities or towns.

CITIES OVER 1,000.

Code of 1902, Section 1982. **Regulation of streets.**—City or town councils shall have power to make, ordain and establish all such rules, by-laws, regulations and ordinances respecting its roads, streets, market places for the health, order and comfort of said city or town as shall appear to them necessary and proper for the security, welfare and convenience of the said city or town or for preserving the health, peace, order and good government within the same.

Section 1983. **Licenses.**—They may by ordinance require the payment of a reasonable license by any parties or corporation intending to engage in any calling, business, occupation or possession in whole or in part within the limits of said city or town, except the business of ministers of the gospel. This applies to railway corporations. See *F. C. & P. Ry. vs. Columbia*, 54 S. C. p. 266.

Section 1985. **Erection of poles and posts.**—They shall keep in order and repair all streets, ways and bridges, and are vested with all powers, rights and privileges within the limits of said city as are given to the county board of commissioners of the several counties in the state as to public roads. And in towns of less than 5,000 they shall have power to authorize the erection of poles, posts and other obstructions which without the legislative sanction either immediately or immediately given would constitute a nuisance in, upon or under the highways, streets and roads of said town.

GENERAL POWERS OF CITIES AND TOWNS.

Code S. C. 1902, page 769, Section 1999. **Regulations as to health, peace, order and good government.**—The town councils of cities and towns have authority to make, order and adopt any rules, by-laws, regulations and ordinances respecting the roads, streets, market places, and peace, health and order of said cities and towns, or respecting any subject as shall appear to them necessary and proper for the security, wel-

fare and convenience of such cities and towns, or for preserving the health, peace, order and good government of same.

Section 2008. **Water and lighting plants.**—All cities and towns have power to construct and operate water works and electric light plants within the corporate limits of said city or town for the use and benefit of said cities and towns and its citizens, and to own and operate apparatus for generating electricity or gas for the use and benefit of said cities and towns and its citizens and to contract for the erection of plants either for water or lighting purposes for the use of said cities and towns and supplying the said citizens thereof.

Section 2010. The board of commissioners of public works shall be vested with authority to build or contract for building said water works and electric light plants and operate the same; and they have full control and management of same, and may supply water, electricity and gas to citizens and require the payment of bills for same.

CORPORATIONS.

Section 1917. **Street railways, etc.**—Three or more persons may form a corporation for building a railroad or for the purpose of carrying on a steam boat, street railway or canal business.

Section 1924. **Street railways may furnish electricity, gas or water.**—Any street railway incorporation shall be authorized to make, produce, generate and supply light, water and heat by means of electricity and gas or either of them for sale to the public.

Act of February 23, 1903, page 77. **Laying water pipes.**—Any municipal corporation in the state having power to construct and operate a plant for water supply, or any individual or private corporation contemplating the laying of pipes for the supply of water to a municipal corporation or to the community of citizens, shall have authority to lay water pipes for the purpose of carrying water under the bed of non-tidal navigable streams in this state with the approval of the county commissioners.

Note.—Local franchises may be obtained either from the

legislature by special grant, or they may be conferred upon companies organized under the general law by the municipalities. The power to grant such franchises is either expressly or inferentially contained in the municipal charter.

The general law in the state does not expressly give the municipalities the power to grant franchises for street railway, electric light, gas and water purposes, but the Supreme court has held that they have implied powers to grant such franchises.

Of course, if the company is organized under a special charter, the legislature can give the company the right to use the public streets and highways, subject, however, to the consent of the local authorities, which must be obtained before the streets and highways can be occupied. Exclusive franchises are against the policy of the law in this state. The power of the legislature and municipalities to grant perpetual franchises has not been determined by the higher courts in this state; but in some states such rights have been questioned, as perpetuities are against the policy of the law in those states. It would be better in this state to have the franchises run for a limited period of time.

SOUTH DAKOTA.

CONSTITUTION.

Article 3, Section 5. **Special laws** shall not be passed incorporating cities, towns or villages.

Section 9. **Special laws** shall not be passed granting to any individual, association or incorporation any special or exclusive privileges, immunities or franchises, nor shall a special law be passed where the general law can be made applicable.

Article 6, Section 12. **No ex-post-facto law** or law impairing the obligation of a contract and making any irrevocable franchise or immunity, shall be passed.

Section 18. **Exclusive privileges.**—No law shall be passed

granting to any citizen, class of citizens or corporation franchises or immunities which upon the same terms shall not belong to all citizens or corporations.

Article 10, Section 1. **Municipalities.**—The legislature shall provide by general law for the organization and classification of municipal corporations.

No street passenger railway and telegraph or telephone line shall be constructed within the limits of any village or city or town without the consent of the local authorities.

Article 17, Section 1. **No corporation shall be created** or have its charter extended, changed or amended by special law, except those of charitable, educational, penal or reformatory under the patronage of the state; but the legislature shall provide by general law for the organization of all corporations.

CITIES.

Code, Hipple's Edition, 1904, page 200, Section 1179. **Classes of cities.**—Cities are divided into three classes: 10,000 or more inhabitants are cities of the first class; between 2,000 and 10,000 inhabitants, cities of the second class, and less than 2,000 inhabitants, cities of the third class.

GENERAL POWERS.

Section 1229, § 1. **Lighting system by city.**—Cities may appropriate money to purchase, erect, lease, rent, equip, manage and maintain any system or part of a system of lighting for the purpose of providing light, heat and power for municipal, industrial and domestic purposes.

§ 9. **Regulate use of streets.**—They may regulate the use of the streets, alleys, avenues, sidewalks, wharfs, parks and public grounds and provide for the lighting of same.

§ 13. **Gas, water and electric lines in streets.**—And they may regulate the openings thereof for the laying of gas or water pipes and the building and repairing of sewers, tunnels and drains and locating gas and electric lines, provided any corporation organized under the general laws of this state for said purpose shall have the right, by consent of the city council, subject to existing rights, to erect gas or electric works and lay pipes or string wires on poles in

the streets and alleys of any city, subject to such regulations as such city may impose.

§ 24. **Street railway tracks on streets.**—They may permit, regulate and prohibit the locating, constructing or laying of tracks of any horse or other railroad in any city or public place, but permission therefor shall not be for a longer period than twenty years.

§ 43. **Water works.**—They may construct and maintain water works and make all the needful regulations concerning the distribution and use of water supplied by such works.

§ 72. **Street railroad rights in streets not to be granted except upon petition of owners of land.**—They cannot grant the use of streets or right to lay down tracks by a steam or horse railroad company, except on the petition of the owners of land representing more than one-half of the frontage of the street or so much thereof as is sought to be used, but such grant or right may be given to occupy any street, a portion of which is bounded by a right of way of an existing railroad on an affirmative vote of at least two-thirds of the members elect of council.

§ 78. **Cities may purchase water works and fire signals.**—They may purchase, erect, lease, rent, manage and maintain any system or part of a system of water works, hydrants and supply of water, telegraph fire signals or fire apparatus.

TOWNS.

Section 1438, § 20. **May authorize street railroads, gas and water pipes in streets and alleys.**—The trustees of any town may authorize the construction and maintenance of street railroads, water mains and water pipes, gas mains and gas pipes, and through the streets and alleys within its limits, and grant franchises to persons and corporations for such purposes and regulate the same.

§ 20. **All towns, cities and municipal corporations** of population of over 350 inhabitants are authorized to erect, lease, rent, manage and maintain a system of water works, telegraph fire signals, or fire apparatus, but that the expense thereof shall require a tax of an annual rate not greater than five mills on each dollar of the assessed value of such city, town and municipal corporation, the

same shall not be authorized until the contract shall have been ratified by a majority of the voters thereof.

CORPORATIONS.

Section 407. Revised Code, Hipple's Edition, 1904. **Corporations** may be formed for manufacturing, mining, mechanical, quarrying and other industrial pursuits and for any lawful business, for the construction of railroads, etc.

Section 780. **Corporations** for mining, manufacturing and other industrial pursuits shall only exist for a term of twenty years.

Act of March 12, 1903, page 115. Any number of persons not less than three may form a corporation for maintaining and operating a street railway.

Railroads.—Every corporation organized under this act shall have power to cause such examinations and surveys for the selection of the most advantageous route for its proposed railroad, and for such purpose to enter by agents, officers and servants upon the lands and waters of any person, subject, however, to responsibility for all damages done to said property by such entry.

They may erect and maintain such buildings, power houses, plants, poles and wires as may be necessary for the transmission of electric power and use same to operate its street railways and to contract with any person or corporation for the furnishing of electric light and power for the operation of farm and other machinery.

And they may contract with any city, town or village for the lighting of its streets and furnishing its inhabitants with electric light and power.

Such corporation has power to lay out its road not exceeding fifty feet in width and obtain gravel and other material for its cuttings and improvements and may take such land as may be necessary for the construction and operation of its road and construct its road along on and across any stream of water, river, water course, highway, street or turnpike and may carry any highway, street or road which it shall cross over or under its tracks as may be most expedient for public safety and welfare, and may change the crossing of any such highway, street or road when necessary.

the streets and alleys of any city, subject to such regulations as such city may impose

§ 24. **Street railway tracks on streets.**—They may permit, regulate and prohibit the locating, constructing or laying of tracks of any horse or other railroad in any city or public place, but permission therefor shall not be for a longer period than twenty years.

§ 43. **Water works.**—They may construct and maintain water works and make all the needful regulations concerning the distribution and use of water supplied by such works.

§ 72. **Street railroad rights in streets not to be granted except upon petition of owners of land.**—They cannot grant the use of streets or right to lay down tracks by a steam or horse railroad company, except on the petition of the owners of land representing more than one-half of the frontage of the street or so much thereof as is sought to be used, but such grant or right may be given to occupy any street, a portion of which is bounded by a right of way of an existing railroad on an affirmative vote of at least two-thirds of the members elect of council.

§ 78. **Cities may purchase water works and fire signals.**—They may purchase, erect, lease, rent, manage and maintain any system or part of a system of water works, hydrants and supply of water, telegraph fire signals or fire apparatus.

TOWNS.

Section 1438, § 20. **May authorize street railroads, gas and water pipes in streets and alleys.**—The trustees of any town may authorize the construction and maintenance of street railways, water mains and water pipes, gas mains and gas pipes, along and through the streets and alleys within its corporate limits and grant franchises to persons and corporations for such purposes and regulate the same.

Section 1520. All towns, cities and municipal corporations having a population of over 350 inhabitants are authorized to purchase, erect, lease, rent, manage and maintain a system of water works, telegraph fire signals, or fire apparatus, but that when the expense thereof shall require a tax of an annual payment greater than five mills on each dollar of the assessed valuation of such city, town and municipal corporation, the

same shall not be authorized until the contract shall have been ratified by a majority of the voters thereof.

CORPORATIONS.

Section 407. Revised Code, Hipple's Edition, 1904. **Corporations** may be formed for manufacturing, mining, mechanical, quarrying and other industrial pursuits and for any lawful business, for the construction of railroads, etc.

Section 780. **Corporations** for mining, manufacturing and other industrial pursuits shall only exist for a term of twenty years.

Act of March 12, 1903, page 115. Any number of persons not less than three may form a corporation for maintaining and operating a street railway.

Railroads.—Every corporation organized under this act shall have power to cause such examinations and surveys for the selection of the most advantageous route for its proposed railroad, and for such purpose to enter by agents, officers and servants upon the lands and waters of any person, subject, however, to responsibility for all damages done to said property by such entry.

They may erect and maintain such buildings, power houses, plants, poles and wires as may be necessary for the transmission of electric power and use same to operate its street railways and to contract with any person or corporation for the furnishing of electric light and power for the operation of farm and other machinery.

And they may contract with any city, town or village for the lighting of its streets and furnishing its inhabitants with electric light and power.

Such corporation has power to lay out its road not exceeding fifty feet in width and obtain gravel and other material for its cuttings and improvements and may take such land as may be necessary for the construction and operation of its road and construct its road along on and across any stream of water, river, water course, highway, street or turnpike and may carry any highway, street or road which it shall cross over or under its tracks as may be most expedient for public safety and welfare, and may change the crossing of any such highway, street or road when necessary.

Any municipality, corporation or county may grant to any such corporation upon such terms as the proper authorities thereof shall determine, the use of any streets, highways, turnpikes or bridges within its limits for the purpose of laying single or double tracks and running cars thereon for the carriage of freight and passengers, to be propelled by animal or electric power, with all the necessary turnouts, switches and other conveniences, with the right to erect trolley poles for the transmission of electric power. Such corporations shall be subject to such reasonable rules and regulations as the proper authorities may from time to time prescribe. No rails shall be laid flush with the surface of the street and highway and shall not be permitted to project above the same.

That portion of the street or roadway between its tracks and for one foot from the outer edge thereof shall be kept in repair and condition by said corporation and at its own expense.

Such corporation may consolidate its stock, franchises and property with any other street railway, electric light and power company within or without the state, when the railroads can be connected or operated together so as to form one continuous line.

TENNESSEE.

CONSTITUTION.

Article 1, Section 22. **Perpetuities and monopolies** are contrary to the genius of a free state and shall not be allowed.

Note.—The exclusive right of a company to furnish a city with water for thirty years is not a monopoly. 5 Heis, page 529.

Article 11, Section 11. **Special laws.**—The legislature shall have no power to suspend any general law for the benefit of any individual or to pass any law for the benefit of individuals inconsistent with the general law, or pass any law granting to any individual or individuals rights, privileges,

immunities or exemptions other than such, as may be by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law.

No corporation shall be created or its power increased or diminished by special laws, but the general assembly shall provide by general laws for the organization of all corporations hereafter created, which laws may at any time be altered or repealed; and no such alteration or repeal shall interfere with or divest the rights which have become vested.

GAS COMPANIES.

Shannon's Code of Tennessee, Section 2208. To enable gas companies to establish its works it is empowered to lay down pipes and extend its conductors through the streets, lanes and alleys of the towns, city or village upon the consent of the municipality.

STREET RAILWAYS.

Section 2392. **Right of way in streets and highways, how obtained.**—Street railways are authorized to consummate any contract with the city authorities of the city or town or with the county court if the road extends or is to be extended beyond the limits of said city and with private individuals necessary to get the right of way along the public street of a city or town or along public roads of a county, Provided that no one of the streets of said city shall be used by said company nor shall any rails be laid down until the consent of the city authorities has been first obtained and an ordinance shall have been passed prescribing the terms on which the same may be done or if the road extends into the county, the consent of the county courts must be first obtained.

Section 2394. **Operation of street-railway.**—A company may operate its street railway by animal power or use a dummy steam engine if said engine shall not give off smoke or steam so as to annoy or frighten persons or animals, or by cable car power, or they may use a stationary steam engine or operate by electricity.

Section 2400. **Extension of lines.**—Any street railway company organized under the laws of Tennessee shall be

authorized and empowered to extend its lines of railway over any road or turn pike leading into such town or city and for that purpose shall have the power under the laws of this state in relation to the condemnation of property for works of internal improvement to condemn and appropriate a right of way of sufficient width for such railway, with the necessary side tracks, turn outs, etc., upon or over any public road, highway or turn pike, and said street railway company shall have the power to condemn for a right of way, and easement through private property subject to all the restrictions, obligations and liabilities as are imposed by existing laws.

Section 2401. **Consent of county court for extension.**—The consent of the county court in which such railway is situated shall be first obtained for such extension and such condemnation and appropriation shall be of the easement for such right of way and not a fee simple of the soil.

Section 2402. **Extension on turn pikes.**—Any street railway company shall not extend their tracks upon any turn pike under the provisions of this law, within less than one-fourth of a mile of any toll gate which is located according to law upon such turn pike without the permission of such turn pike company.

Section 2407. Any street car company applying to the county court, for the privilege of extending its lines upon any turn pike or public road, shall give the officials of the turn pike company or road commissioners, five days' notice before making application for such right of extension.

Act of April 15, 1903, Supplement to Shannon's Code of Tenn., 374. **May condemn right of way.**—Any electric street railway company whether chartered under the laws of this state or any other state, now operating a street car line in any incorporated city or town in Tennessee, is hereby authorized to extend its street car line from said city or town in any direction, and for said purpose such street railway company is hereby given the right to condemn for rights of way, and all necessary use for its said extensions, such private property as may be reasonably necessary therefor, subject to all the restrictions, obligations and liabilities now imposed by the existing laws, in respect to the condemning of private prop-

erty for railroads and works of internal improvement, as set forth in Section 1844 to 1867 inclusive of Shannon's Compilation of the Laws of Tennessee, Provided that where such street railway may pass over any public road, it shall leave the same in as good condition as before and, Provided further, that the provision of this act shall in no wise affect the rights of cities over their streets and, Provided further, that the provisions of this act shall not apply to any county having a population of 150,000 or more, according to the last federal census or any subsequent census and, Provided the provisions of this act shall apply only to counties having a population of not less than 24,250 and no more than 24,940 according to the last federal census and any subsequent federal census.

Act of April 7, 1903. **Parks.**—Electric street railway companies chartered under the laws of this state are authorized to purchase, own and control public or private parks and may extend their tracks for this purpose, and may acquire rights of way by contract or condemnation in the manner and form as now prescribed by law providing for the organization of such companies.

Act of April 22, 1901, Shannon's Supplemental Code, 376. **Railways may sell electric light in certain cities.**—Electric street railway companies, are empowered to furnish and sell to persons, corporations or cities, electricity for lighting and power purposes, in cities within the state having a population of not more than 15,000.

Act of April 11, 1903, Shannon's Supplement to Code, 377. **Interurban railways and street railways may distribute electricity.**—Interurban railroads and street railroads shall have power to manufacture, generate and distribute electricity for light, heat and power for the purpose of supplying themselves and others.

ELECTRIC LIGHT COMPANIES.

May use streets and highways. Shannon's Code of Tenn., Section 2486. Any company organized under section 2485 relating to the incorporation of water, electric light, heat and power companies are authorized and empowered and invested with the privilege of placing and extending its electric light

wires and conductors either underground or on poles overhead, along and through all or any of the streets, lanes and alleys of the cities and towns of the state and along or through all or any of the roads, pikes and public highways of the counties of the state and to supply the inhabitants of the cities and towns and counties of this state with electric light, heat and power.

WATER COMPANIES.

Section 2492. **Rights to lay pipes.**—Water companies are empowered to lay down pipes through the streets, lanes and alleys of any town, city or village in such manner as to produce the least possible inconvenience to the town, city or village.

Section 2498. **Charter not to be granted until right to operate is obtained from corporate authorities.**—Charters for water companies shall not be granted until after leave to operate same, shall have been first had and obtained from the corporate authorities of the city, town or village, in which it proposes to operate such water works.

Act of April 29, 1897, Shan. Sup. Code, p. 388. **May condemn property.**—Section 2492 of the Code is amended as follows: The said corporation (referring to a water company) is hereby empowered and authorized to condemn, take and occupy, such land as may be necessary for the location of a reservoir or reservoirs, and the right of way through any and all lands which may be deemed necessary in laying its pipe or pipes, aqueducts or conductors through which the water is to flow or to be transmitted from its reservoir or reservoirs, the same to be laid and placed in such manner, so as to do as little injury as possible to private property. If a corporation cannot agree upon the amount of compensation, to be paid for such land and right of way with the owners thereof, the same shall be assessed and all the proceedings had as is and are provided by Sections 1325 to 1348 inclusive of the Code. (Sections 1844 to 1867 inclusive of Shannon's Code).

POWERS OF CITIES.

Section 1915. Municipal corporations have power to ascertain and declare when necessary the boundaries of streets and alleys and to grant franchises in the use and enjoyment of same.

Note.—Nearly all the cities and towns in this state have been chartered by special act. The constitution prohibiting the creation of any corporation by special law, has been declared not to apply to municipal corporations. Hence there are very few cities or towns in this state of any size incorporated under the general laws. Therefore, in determining the limitations upon the powers of many municipalities the charter must be looked to. Most of the charters of the cities and towns have greater powers than are given under the general law and are so large in scope that they may, and some of them do, own their own municipal plants for water and light.

Inasmuch as the constitution prohibits perpetuities and monopolies, it is important that the franchise shall have a time limit. If not, such a franchise without limit may be construed to be a mere license, revocable at any time by the municipal authorities. Although the Supreme court of this state has held in one or two instances that an exclusive grant was not a monopoly, the disposition of the court not only in this state but others, is, that exclusive franchises cannot be granted by a municipality except under certain conditions and only then when they are directly empowered through some legislative act.

TEXAS.

CONSTITUTION.

Article 1, Section 17. No irrevocable or uncontrollable grant of special privileges or immunities shall be named, but all privileges and franchises granted by the legislature or created under its authority shall be subject to the control thereof.

Section 26. **Perpetuities and monopolies** are contrary to the genius of a free government and shall never be allowed. Nor shall the law of primogeniture or entailments ever be in force in this state.

Article 3, Section 56. **Special laws.**—The legislature shall not pass local or special laws incorporating cities, towns or villages or changing their charters and in all other cases where the general law can be made applicable, no local or special law shall be enacted.

Article 10, Section 7. **Street railways.**—No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town or village or upon any highway without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

CORPORATIONS.

Code of 1895, Article 642. **Incorporation of gas, electric and street railway companies.**—Private corporations may be incorporated for the manufacture and supply of gas and the supply of heat and electric motive power or either of them to the public by any means. They may be incorporated for constructing, acquiring and maintaining and operating street railways and suburban or belt lines of railway within the near cities and towns, and may also construct, own and operate union depots; but no street railway shall ever be exempt from the payment of assessments that may be legally levied or charged against it for street improvement, and for the establishment of companies to buy, own and sell and convey the right of way upon which to construct railroads.

GAS AND WATER CORPORATIONS.

Article 705. **Laying pipes on streets.**—Any gas or water corporation shall have full power to manufacture and sell and to furnish such quantities of water and gas as may be required by the city, town or village where located for public or private buildings, or for other purposes, and such corporation shall have power to lay pipes, mains and conductors for conducting gas or water through the streets,

alleys, lanes, and squares in such city, town or village with the consent of the municipal authorities thereof and under such regulations as they may prescribe.

GENERAL POWERS OF CITIES.

Article 419 of Code, Chapter 4. **Control of streets.**—City council shall have the exclusive control and power over the streets, alleys and public grounds and highways of the city and to abate and remove encroachments or obstructions therein. To open, alter, widen, extend, establish, regulate, curb, clean and otherwise improve said streets.

Article 421. **Lighting streets and laying pipes in.**—To provide for lighting the streets, and erecting lamp posts and regulate the lighting thereof, and from time to time, alter or extend lamp districts. To exclusively regulate, direct or control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere.

Section 460. **Railroad tracks in streets.**—To direct and control the laying and constructing of railroad tracks, turn outs and switches, or prohibiting the same in the streets, avenues and alleys, unless the same have been authorized by law, and the erection of depots within the city. To require that railroad tracks, turn outs and switches, shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys, and that sufficient space shall be left on either side of said track, for the safe and convenient passage of teams, carriages and other vehicles and persons. To require railroad companies to keep in repair the streets, avenues or alleys through which every track may run, and if ordered by the city council, to construct and keep in repair, suitable crossings, at the intersection of streets, avenues and alleys and ditches, switches and culverts, when the city council shall deem it necessary. To direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city. Provided that the provisions of this article shall apply to railroads known as steam railroads and not to city, street and horse railroads.

Article 461. **Taxes upon street railway properties—Rates of speed, etc.**—The city council shall have power to assess

and collect the ordinary municipal taxes upon city or horse railroads, and to compel said city railroad companies, to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been created by the city, and to restrain the rate of speed so as to not exceed seven miles per hour, and to compel said city railroads to supply ample accommodation, for the safe and convenient travel of the people among the streets, where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties for any violation of said ordinances.

Note.—Under the constitution and the laws of this state exclusive and perpetual franchises cannot be granted by municipalities to public service corporations. Although there is no specific act of the legislature relative to the rights of municipalities to grant franchises to public utility companies for the use of the streets, the Supreme Court in several decisions has held that the general powers, which are set out above, were sufficient for a municipality to grant franchises for such purposes. See 64 Texas, 84; 80 Texas, 666; 83 Texas, 555.

UTAH.

CONSTITUTION.

Article 1, Section 23. **Irrevocable franchise.**—No law shall be passed granting irrevocably any franchise privilege or immunity.

Article 6, page 12. **No special law** shall be passed incorporating cities, towns or villages changing or amending the charter of any city, town or village, laying out, opening, vacating or altering town plats, highways, streets, wards, alleys and public grounds.

No special law shall be passed granting to any individual, association or corporation any privilege, immunity or franchise.

Article 11. Municipal corporations.—Corporations for municipal purposes shall not be created by special laws.

Article 12. Corporations.—Corporations may be formed by general laws but shall not be created by special acts; all laws relating to corporations may be altered, amended or repealed by the legislature, and all corporations doing business in this state may as to such business be regulated, limited or restrained by law.

Article 12, Section 8. Street railway and electric wires on streets.—No law shall be passed granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant, within any city or incorporated town, without the consent of the local authorities who have control of the street or highway proposed to be occupied for such purposes.

CITIES AND TOWNS.

Act of March 24, 1903, p. 191, Section 206. **The city council shall have the following powers:**—To regulate the use of streets, alleys, sidewalks, crosswalks, parks and public grounds.

Lighting.—To provide for the lighting, sprinkling and cleaning of the same.

Water pipes.—To regulate the opening and use thereof, for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains.

Street railway, water, gas and electric works, telephone lines.—To construct and maintain water works, gas works, electric light works, telephone lines, street railway or bath houses, or to authorize the construction and maintenance of the same by others, or to purchase or lease any or all of said works from any person or corporation.

May authorize gas and electric works.—To contract with and authorize any person, company or association to construct gas works, electric and other light works in said city, and give such persons, company or association the privilege of furnishing light to public buildings, streets, sidewalks and alleys of said city for any length of time not exceeding three years.

Regulation pipes, poles and wires, lighting of streets, and

charges for gas or electricity.—To provide for the lighting of streets, laying down of gas pipes and location of lamp posts; to regulate the sale and use of gas, natural gas and electric or other lights and electric power, the charge therefor and the rent for meters within the city and to regulate the inspection thereof; to prohibit or regulate the erection of telegraph, telephone or electric wire poles in the public grounds, streets or alleys, and the placing of wires thereon, and to require the removal from the public grounds, streets or alleys of any and all of such poles and placing underground of any and all telegraph, telephone or electric wires.

Regulate and prohibit railroad tracks.—To permit, regulate or prohibit the locating, constructing or laying the tracks of any railroad or tramway in any street, alley or public place, and to grant franchises to railroad companies, and to union railroad depot companies, to lay, maintain and operate in any street or part or parts of streets of said cities or other public places therein, railroad tracks and union railroad depot connecting and terminal tracks, but such permission shall not be for a longer time than 100 years.

To provide for or change the erection, grade or crossing of any railroad, and to declare a nuisance, and to take up and remove or cause to be taken up and removed the tracks of any street railway company which shall have been laid upon the streets or highways of the city, and which such railway company has failed to operate with cars for public use for a period of nine months after the laying thereof.

Act of March 9, 1899, page 44. **Track of street railway.**—The city council of any city, shall have the power to require the tracks of any steam or street railroad company, to be taken up and removed which shall have been laid upon the streets, alleys or highways of the city and which tracks remain on said streets, alleys and highways of the city contrary to the terms and conditions of the franchise of the company, or which is declared by the city council a nuisance, or which said railway company has failed to operate for a period of nine months prior to the time when such nuisance shall be declared, and shall have the power to declare any of the acts specified in this section a nuisance.

The city council of any city shall have power to require

any steam or street railway company to place gates at any place along its tracks, and is hereby authorized to designate the places where said gates shall be placed, and the nature, kind and quality of such gates.

Statutes of Utah, 1898, § 266. **Paving by railroads.**—All horse, cable, steam, electric or other railroad companies now existing or hereafter created in any city already incorporated or hereafter organized, shall be required to pave or repave at their own cost, all the space between their different rails and tracks, and also the space two feet wide outside of the outer rails of the outside tracks; and the tracks herein referred to shall include not only the main track, but also the side tracks, crossings and turnouts used by such company; where two or more companies occupy the same street or alley with separate tracks, then each company shall be responsible for its proportion of the surface of the street or alley occupied by all the parallel tracks as herein required.

TOWNS.

Section 302, page 17. **Powers.**—The Board of Trustees in each town have power to lay out, construct, open, grade, pave and otherwise improve streets, lanes, alleys, sidewalks and cross walks, and prohibit the encumbering of the same with any material, and to prohibit riding or driving on side walks except to cross the same; to lay out, construct, open and keep in repair, canals, water ditches or water pipes for domestic or other use for the inhabitants of such town, and to annually assess and collect a water tax for said purposes upon the real property in said town benefited thereby.

COUNTIES.

Act of March 23d, 1903, page 160. **The Board of County Commissioners in each county has jurisdiction and power among other things as follows:**

Section 25. **Franchises.**—To grant franchises along and over the public roads and highways, for all lawful purposes upon such terms, conditions and restrictions as in the judgment of the board, may be necessary and proper, and in such manner as to prevent the least possible obstruction, and in-

convenience to the traveling public, but such permission shall not be for a longer period than fifty years.

EMINENT DOMAIN.

Act of March 5, 1901, page 19. Section 3588. Subject to the provisions of Chapter 65, Rev. Stat. of 1898, the right of eminent domain may be exercised in behalf of the following uses:

Section 4. Wharfs, docks, piers, chutes, booms, ferries, bridges, toll roads, by roads, plank and turn pike roads, roads for transportation by traction engines or locomotive, roads for logging or lumbering purposes and railroads and street railways for public transportation.

Section 8. Telegraph, telephone, electric light and electric power lines and sites for electric light and power plants.

Section 10. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light and heat.

VERMONT.

Act of November 27th, 1900, p. 44, Section 4244. **Wires upon highways.**—Lines of telegraph, telephone and electric wires may be constructed and maintained by any person or corporation upon or under any highway, but shall be done in such manner as not to interfere with the repairs of the highway or the public convenience in traveling upon or using same.

Section 4225. **Location of wires by selectmen or aldermen.**—When it is inconvenient or inexpedient to erect such wires agreeably to the preceding section, the selectmen of the town, or aldermen of a city, or the trustees of any incorporated village shall determine, upon application, where and in what manner such wires shall be erected, giving notice to the per-

sons interested therein and shall certify their decision, which shall be recorded in the town or city clerk's office and such decision shall be final.

Section 4226. **Regulate the height of wires.**—The selectmen of a town, aldermen of a city or trustees of a village may direct any line of wire to be placed at a greater height or underground when it crosses a street or highway, and if the line of wires is erected or maintained under or across a street or highway contrary to the direction of the selectmen, aldermen or trustees or said line of wire is not changed when directed by them, they may remove such lines and in the name of the city, town or village recover the expense thereof from the person or corporation using the same.

Section 4227. **Objection to erection of line how and to whom made.**—If a person objects to the erection of a line of wires on a street or highway in front of his residence he may apply to the aldermen of a city, selectmen of a town or trustees of a village, who shall upon notice and hearing as provided in the second preceding section, determine upon what streets or highways the same shall pass or in what manner, if at all, such objection may be obviated and such decision shall be final.

Section 4232, Vermont Statutes, 1894. **Damage to owners of land.**—When in the erection of a line of wires the owners or occupant of lands or tenants, sustain or is likely to sustain damages thereby, the selectmen of a town shall upon notice to the person interested, appraise such damages, and the same shall be paid before the line is erected, unless petition is made to the County Court on the question of damages, in the same manner, as is provided for a person dissatisfied with the compensation for the laying out or altering a highway.

Section 4234. **Electric lines may be erected on railroad right of way.**—Telegraph, telephone or electric companies may erect and maintain its lines on the sides of railroad tracks within the limits of lands owned or held by a railroad company by paying it a reasonable compensation therefor.

CITIES AND VILLAGES.

Section 4241. Towns may construct for their use telegraph, telephone and electric light lines, upon or along the highways and public roads within their limits.

Section 4242. **Selectmen may authorize persons to construct wires for private use upon the highways.**

Section 4260. **Companies may purchase or consolidate an electric light plant.**—A domestic gas company in addition to the rights conferred upon it by its charter, may construct, purchase, maintain and use for lighting and other legitimate purposes an electric light plant, or consolidate with an electric light company and purchase and hold real estate and personal property convenient for such purpose.

STREET RAILWAYS.

Vermont Statutes, 1894, page 702. Section 3935. **Requirements before constructing street railways.**—A person or corporation proposing to construct a railway in any of the highways or streets in this State, shall file with the selectmen of a town, or with the trustees or bailiffs of a village, or aldermen of a city, and with the city clerk of such town, city or village in which said railway is proposed to be erected, a statement defining the streets and highways, and the portion thereof in which said railway is to be located, the tracks, turnouts and switches to be placed therein, the culverts and bridges that the same is to cross, the manner of improving and constructing the same, the erection of poles and wires that are intended to be used in connection therewith and the kind of power to be used in operating the same before beginning the construction of said railway.

Section 3936. The statement referred to in the preceding section, may be made with reference to sections or portions of said railway, and before beginning the construction of such railway, such statement must be made and filed and the permission of the selectmen, trustees, bailiffs and aldermen obtained for building and operating said railway in the streets and highways described in the statement.

Section 3937. If such person or corporation fails to agree with the selectmen, trustees, bailiffs or aldermen, as the

case may be, as to the location, manner of construction and use of said railway, either party may apply to the railway commissioners. Upon such application said commissioners after due notice to the parties shall examine the premises, hear the parties and decide the question presented to them and their decision shall be final.

Section 3938. Damages.—If a person is damaged by the construction or operation of such railway and cannot agree with the railway as to the same, the parties may apply to the County Court, if in session, if not, then to any Judge of the Supreme Court, whereupon after due notice the Court shall appoint three disinterested persons commissioners, who shall decide the same, and report their doings and findings to the County Court, which shall render judgment thereon, and all rights to exceptions thereto shall be the same as is prescribed by law.

Section 3939. Not to cross at grade.—No street railway, or other railroad, shall be laid or constructed across another railroad at grade, unless permission of the railroad commissioners for such grade crossing is first obtained.

Act of November 21, 1902, p. 67. Chapter 170 of the Vermont Statutes, and the amendments, are made a part of all special acts of incorporation of all street railways heretofore granted, including any and all that may be granted by present session of the General Assembly.

Note.—This act makes the laws relating to street railways referred to herein, apply to all street railway companies incorporated under special act prior to 1903.

All public utility companies may be organized under special act, and gas, water and electric light companies may be incorporated under the general law in force in this state. It seems to be the practice in this state to incorporate franchise companies under special act. The general laws, except as quoted herein, do not in terms give gas, electric light, street railway and water companies the rights to use public highways, nor do the cities, towns and villages have the right to grant such franchise, unless authorized in their charter.

All of the municipalities are incorporated under special act,

so that their charters should be looked to, to learn their powers upon these questions. The legislature, in granting a special charter to a corporation, has the power to make it exclusive and perpetual.

VIRGINIA.

CONSTITUTION.

Article 4. Corporations.—No special law can be passed creating private corporations or renewing or amending the charters thereof or granting any private corporation or associations or individuals any special or exclusive right, privilege or immunity.

No special law shall be passed where in the judgment of the General Assembly a general law will apply to or provide for it.

Section 116, Article 8. Cities and towns.—All incorporated communities having within its defined boundaries a population of 5,000 or more shall be known as cities and those with less than 5,000 shall be known as towns.

Section 117. Cities and towns governed by general laws.—The General Assembly shall enact general laws for the government of cities and towns, but each of the cities and towns of this state having at the time of the adoption of this constitution a municipal charter, shall retain the same except so far as it shall be repealed or amended by the General Assembly.

Section 124. Consent of corporate authorities before franchise can be obtained.—No street railway, gas, water, steam and electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone or bridge company or any corporation, association, person or partnership engaged in these or like enterprises, shall be permitted to use the streets, alleys and public grounds of a town without the previous consent of the corporate authorities of such city or town.

Term of franchise.—Franchises shall not be granted for a longer period than **thirty years**.

Sale of franchise with right of city to take plant of grantee with or without compensation.—Before granting such franchise or privilege for a term of years, except for trunk railway, the municipality shall first after due advertisement receive bids therefor publicly, in such manner as shall be prescribed by law. Such grant shall provide that upon its termination the plant as well as the property if any of the grantee in the streets, alleys or public places shall thereupon without compensation to the grantee or upon the payment of a fair valuation thereon be and shall become the property of the city and town, but the grantee shall be entitled to no payment by reason of the value of the franchise, and any such plant and property acquired by a city or town, may be sold or leased or if authorized by law, may be maintained, controlled and operated by such city or town.

Mode of valuation.—Every such grant shall specify the mode of determining any valuation therein provided for, and shall make adequate provision by way of forfeiture of the grant or otherwise, to secure the efficiency of public service at reasonable rates, and the maintenance of the property in good order, throughout the term of grant.

Nothing herein contained shall be construed as preventing the General Assembly from prescribing additional restrictions on the powers of cities and towns in granting franchises or selling or leasing any of their property.

Code of 1904, page 492, Section 1033 E. **Sale of property, rights in property, streets, grant of franchises, term thereof not longer than 30 years, conditions of grant, right of city to take plant.**—The right of a city or town in and to its water front, wharf property, public lands, wharves, docks, streets, avenues, parks, bridges and other public places and its gas, water and electric light works shall not be sold except by ordinance or resolution passed by a recorded affirmative vote of three-fourths of the members elected of council or each branch thereof where there are two and under such other restrictions as may be imposed by law. No franchise, lease and right of any one to use any such public property or any other public property or easement of any description in a

manner not permitted to the general public shall be granted for a longer period than thirty years. Before granting any such franchise or privilege for a term of years except for a trunk railway the municipality shall first after due advertisement receive bids therefor publicly in such manner as is prescribed by the following section: and shall then act as prescribed by law. Such grant may provide that upon the termination thereof the plant as well as the property if any of the grantee on the streets, avenues and other public places shall thereupon without compensation to the grantor or upon the payment of a fair valuation thereon become the property of the said city or town; but the grantee shall not be entitled to any payment by reason of the value of the franchise and any such property acquired by the city or town may be sold or leased or if authorized by law, maintained, controlled and operated by such town or city. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service.

Section 1033 F. How and when franchise is sold.—Before granting any franchise, privilege, lease or right of any kind to use any public property or easement of any description except in the case of and for a trunk railway, it shall be the duty of the city or town proposing to make the grant to advertise the ordinance proposing to make the grant, after its terms shall have been approved by the mayor or the ordinance passed over the mayor's veto, once a week for four consecutive weeks in a newspaper published in said city or town or if no newspaper be published therein then in some newspaper having general circulation therein. Such advertisement shall invite bids for the franchise, which bids are to be in writing and delivered upon the day and hour named in the advertisement to the presiding officer of the council or board of trustees or if there is more than one branch thereof, to the most numerous branch in the city council in open session. After canvassing the bids it shall be the duty of the council, if it sees fit to make the grant, to accept the highest and best bid, and enact the ordinance as advertised, without substantial variation except as to the insertion of the name of

the accepted bidder. Provided that the council may reject the higher and accept the lower bid and award such franchise to the lowest bidder if in its opinion some reason affecting the interest of the city or town makes it advisable to do so, which reason shall be itself expressed in the body of the subsequent ordinance granting the same. In case no bid at all is made, the council may, if it sees fit to do so, enact an ordinance, in the manner required by the law, granting such franchise to any person or corporation making application therefor. Provided further, that the person or corporation to whom such franchise is awarded, by competing bids or not, shall first execute a bond with good and sufficient security, in favor of the city or town as the city or town shall determine, conditioned upon the construction and putting into operation and maintaining the plant and plants provided for in the franchise, right or privilege granted. No amendment or extension of any such franchise, right and privilege that now exists or that may hereafter be authorized which extends or enlarges such franchises, rights or privileges, either as to time during which it is to last or as to the territory in which it is to be enjoyed, shall be granted by any city or town until the provisions of this act shall have been complied with; and no amendment that releases the grantee or his assignee from the performance of any duty required by the ordinance granting the franchise, or that authorizes an increase in the charges to be made by such grantee or assignee for the use by the public of the benefits of such franchise, shall be granted unless and until notice of such proposed amendment shall be given to the public by advertising the proposed amendment for ten days in some newspaper published in the city or town, or if there be no newspaper published therein, then in some newspaper having a circulation therein.

PUBLIC SERVICE CORPORATIONS.

Code 1904, page 653. As used in this act the words "public service corporations" shall include transportation and transmission companies, turnpikes and other internal improvement companies, gas pipe lines, electric light, heat and power and water supply companies, and all persons, firms, partner-

ships or corporations authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over or under the same in a manner not permitted to the general public, and shall exclude all municipal corporations and public institutions owned or controlled by the state. Transportation companies shall include any company, trustee or other person owning, leasing or operating for hire a railroad, street railway, canal, steam boat, steamship line, and also any freight car company, car association, car service association or car trust, express company, trustee or persons in any way engaged in business as a common carrier over the road, in whole or any part, under the right of eminent domain.

As used by this act, transmission companies shall include any company owning, leasing or operating for hire any telegraph or telephone line.

As used in this act the word railroad shall include all railroads or railway lines, whether operated by steam, electricity or other motive power, and shall include any company, trustee or other person owning, leasing or operating a railroad or railway, whether operated by steam, electricity or other motive power, except when otherwise specifically designated.

Code 1904, page 699, Section 1294 "i." **Rights to use public roads and highways.**—Every corporation organized for the purpose of producing, distributing and selling steam heat and power, or compressed air or for the purpose of producing, distributing and selling gas made of coal or other materials or for the purpose of furnishing and distributing a water supply to any city or town, or for the purpose of establishing and maintaining any viaduct, bridge or conduit shall, in addition to the powers conferred upon corporations generally, have authority to use the public roads and highways of the counties, and the public parks, streets, avenues and alleys of the cities and towns in the state, and it may construct and maintain its works on, over and under the same, and lay the necessary pipes and conduits beneath such public roads, highways, parks, streets, avenues and alleys; provided, however, that any such pipes and conduits shall be laid at such distance below the surface of any public road, highway, park,

street, avenue or alley as may be prescribed by the proper municipal or corporate authorities, and shall not in any wise unnecessarily obstruct or interfere with public travel or damage private property without compensation therefor; and provided further, that the consent of the board of supervisors or corporate authorities of the city or town, as the case may be, shall first and as a condition precedent be obtained before any such public road, highway, park, street, avenue or alley shall be occupied by works of any such company or be disturbed, opened or dug up for any of its purposes. The consent of such corporate authorities shall be by ordinance regularly adopted by council or other governing body of any city or town, and the consent of the board of supervisors shall be by resolution adopted and spread upon the minutes of the board. The use of the public roads, highways, streets and alleys shall be subject to such terms and regulations and restrictions as may be imposed by the corporate authorities.

Pipes shall be laid at a distance of not less than three feet if possible from the outside of any water or gas pipes or other pipe or conduit already laid, except in cases where it is necessary that said pipes or conduits shall cross any water or gas pipes or other pipes and conduits such pipes or conduits shall be at least twelve inches distant from the outside of any water or gas pipes or other pipe or conduit already laid. **Every corporation organized for the purpose of constructing, maintaining and operating an electric railway or works for the supply and distribution of electricity for light, heat and power shall, in addition to the powers conferred upon corporations generally, have full power to use, subject to the provisions of this chapter, the public roads and highways of the counties, and public parks, streets, avenues and alleys of this state for the purpose of laying conduits, pipes or tracks and of erecting poles and posts on, over or under same to sustain the necessary wires and fixtures. Provided that it shall not in any wise unnecessarily obstruct or interfere with the use of the same or the public travel over the same, or damage public property, without compensation therefor; and provided also that any pipe or conduit shall be laid at least three feet below the surface, and at a dis-**

tance of at least three feet if possible, from the outside of any water or gas pipe or conduit already laid, except in cases where it shall be necessary that said conduit or pipe shall cross any such gas, water and other pipe, then it shall be at least 12 inches distant from the outside of any water or gas pipe or other pipe or conduit already laid.

The consent of the board of supervisors of the county or the corporate authorities of the city or town shall first and as a condition precedent to be obtained before such public road, highway, park, street, avenue or alley shall be used or occupied with the works of any such company, or disturbed, opened or dug up, or any such conduit, pipe or track laid, or any such posts or poles placed thereon, or wires or fixtures strung or placed upon such posts or poles. The consent of the corporate authorities shall be by ordinance and the consent of the board of supervisors shall be by resolution adopted and spread upon its minutes, and the use of such public roads, etc., shall be subject to such terms, regulations and restrictions as may be imposed by the corporate authorities of any city or town and the board of supervisors of any such county.

Owner of land.—The corporations mentioned may contract with any person or corporation or owner of lands for any interest, franchise, privilege or easement over, under or through which any such line is to be constructed for the right of way for its lines and works and for sufficient land for its necessary offices, plant and plants, works, stations or structures.

Eminent domain.—If the company and the owner cannot agree on the terms of such contract the company may acquire such right of way in the manner provided by the laws of this state for the exercise of the right of eminent domain; and in case any person is damaged in his property on the line of such public road, by such use or occupation by any company enumerated in Sections 1 and 3, such company, before using or occupying with its works such public roads, highways, etc., shall make compensation therefor to the person so damaged; said compensation, if the parties cannot agree upon the same, is to be ascertained in the mode prescribed by the law for the exercise of the right of eminent domain.

WASHINGTON.

CONSTITUTION.

Article 1, Section 8. **Irrevocable franchises.**—No law granting irrevocably any privilege, franchise or immunity shall be passed by the legislature.

Section 12. **Grant of equal privileges.**—No law shall be passed granting to any citizen, class of citizens or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

Article 2, Section 28. **Special laws** are prohibited for granting corporate powers or privileges and for incorporating any town or village or to amend the charter thereof.

Article 12, Section 1. **Corporations.**—Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited or restrained by laws.

CORPORATIONS—EMINENT DOMAIN.

Act of March 13, 1899, Ballinger's Codes and Statutes of Washington, Volume 3, page 605. **Eminent domain by electric and street railway companies.**—The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States and doing business in this state for the purpose of transmitting electric power by wire, cable or other means, or for operating railways or railroads by electric power; provided, however, that said right of eminent domain shall not be exercised with respect to any residence or business structure or structures, public road or street.

Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damages thereby.

Every such corporation shall have the right, subject to the provision contained in Section 1 hereof, to appropriate real estate or other property for right of way or for any corporate purposes in the same manner and under the same procedure as now is or may hereafter be provided by law in case of other corporations authorized by the laws of this state to exercise the right of eminent domain.

Act of March 17, 1903, page 360, Chapter 173, Section 1. **Franchise for electric poles and wires.**—The legislative authority of a city or town having control of any public street or road, or where such street or road is not within the limits of any incorporated city or town then the board of commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, along and across any such public street or road; and in granting such authority the legislative authority of such city or town or the board of commissioners, as the case may be, may prescribe the terms and conditions on which such transmission line and its appurtenances shall be constructed, maintained and operated, upon, over, along and across such road or street, and the grade or elevation at which the same shall be constructed, maintained and operated. Provided that hereafter, on application being made to the board of county commissioners having such authority, the board shall fix the time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant by posting written or printed notices in three public places in the principal city of the county and in at least one conspicuous place on the road or street or part thereof for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or, if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets, or parts thereof, for

which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by order of the board. If after such hearing the board shall deem it to be for the public interest to grant such authority in whole or in part, the board may make and enter the proper order granting the authority applied for, or such part thereof as the board deems for the public interest, and shall require such transmission line and its appurtenances to be placed in such location on or along the road or street as the board finds will cause the least interference with other uses of the road or street. In case any transmission line is or shall be located on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way if such crossing is so constructed and maintained as to do no unnecessary damage; provided that any person or corporation constructing such crossing or operating such transmission line on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel.

Section 2. Electric power companies may appropriate real estate.—Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any other state or territory of the United States, and doing business in this state for the purpose of manufacturing or transmitting electric power shall have the right to appropriate real estate and other property for right of way or for any corporate purpose in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain; provided that such right of eminent domain shall not be exercised with respect to any public road or street until the location of the transmission line thereof has been authorized in accordance with Section 1 of this act.

Section 3. Electric power companies may lease or purchase electric plants from other companies, including franchises.—Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state

or territory of the United States for the purpose of manufacturing, transmitting or selling electric power may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto; provided that such lease or purchase has been or shall be consented to by the stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation, and all such leases and purchases heretofore made or entered into by the consent of stockholders as aforesaid are for all intents and purposes ratified and confirmed, saving, however, any vested rights of private parties.

Act of March 17, 1903, page 364, Chapter 175, Section 1.
Street railway franchises in streets, roads and highways.—The legislative authority of a city or town having control of any street or road, or where such street or road is not within the limits of any incorporated city or town then the board of county commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroad or railways, together with such poles, wires and other appurtenances on, in, over, along or across any such public street or road; and in granting such authority the legislative authority for such city or town or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which said electric railway or railroad and its appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street and the grade or elevation at which the same shall be constructed, maintained and operated; provided that hereafter, on application being made to the board of county commissioners for such authority, the board shall fix the time and place for hearing the same and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the principal city of the county and in at least one conspicuous place on the road or street or part thereof for which application is

made at least thirty days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper in the county, and, if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the road or street or parts thereof for which the application is made, and the time and place fixed for hearing. Such hearing may be adjourned from time to time by order of the court. If, after such hearing, the board shall deem it to be for the public interest to grant such authority, in whole or in part or any part, the board may make and enter a proper order granting the authority applied for, or such part thereof as the board finds will cause the least interference with other uses of the road or street. In case any such railroad or railway is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage; provided that any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel.

Section 2. Street railways may appropriate real estate.—Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory of the United States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property, for the right of way or for any corporate purpose, in the same manner and under the same procedure as now is, or may hereafter be provided by law, in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain; provided that such right of eminent domain shall not be exercised with respect to any public road or street

until the location of the electric railroad or railway thereon has been authorized in accordance with Section 1 of this act.

Section 3. Street railways may lease or purchase other railways and their franchises.—Any corporation incorporated or that may be hereafter incorporated under the laws of this state or any state or territory of the United States for the purpose of constructing, owning or operating railroads or railways by electric power may lease or purchase and operate (except in case where such lease or purchase is prohibited by the constitution of this state) the whole or any part of the electric railroad or electric railway of any other incorporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances pertaining thereto; provided that such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties.

Act of March 12, 1903, Chapter 180, Section 1. **Railroad, right of eminent domain.**—That Section 4334 of Ballinger's Annotated Codes and Statutes of Washington relating to the appropriation of lands and highways for corporate purposes be and the same is hereby amended to read as follows: Section 4334. Every corporation organized for the construction of any railroad, macadamized road, plank road, clay road, canal or bridge is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights of way for tunnels beneath the surface of the land and any elevated right of way above the surface thereof, including the lands granted to the state for university, school or other purposes and also tide and shore lands belonging to the state (but not including harbor areas) which may be necessary for the line of such road, railway or canal, or the site of such bridge not exceeding 200 feet in width, besides a sufficient quantity thereof for toll houses, work shops, materials for construction of the right of

way over adjacent lands or property and to enable such corporation to construct and prepare its road, railway, canal or bridge and to make proper drains, and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including land granted to the state for university, school or other purposes in addition to that before specified in this section, for the construction and excavation of such canal and for the slopes and berms thereof not exceeding 1,000 feet in total width; and, in case of a railway, to appropriate a sufficient quantity of any such land, including lands granted to the state for university, school and other purposes, and also tide or shore lands belonging to the state (but not including harbor areas) in addition to that before specified in this section for the necessary sidewalks, depots and water stations and the right to take water thereto by aqueduct. Compensation therefor to be made to the owner thereof, irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law; and provided further, that if such corporation locate the bed of such railroad or canal upon any part of the track now occupied by any established state or county road, such corporation shall be responsible to the county commissioners of said county or counties in which said state or county road so appropriated is located for all expense incurred by such county or counties in relocating or opening the part of such road so appropriated. The term land as herein used includes tide and shore land, but not harbor areas. It also includes any interest in land or contract right relating thereto, including any leasehold interest therein.

CITIES AND TOWNS.

Section 1076, Ballinger's Codes and Statutes, Volume 3. **Water and electric works of cities; authorization; the construction thereof by others; regulation of rates.**—That any incorporated city or town within the state is authorized to construct, condemn and purchase and to maintain and operate water works for public or private use, also to construct, condemn, purchase, maintain and operate works for furnishing electricity for lighting, heating and fuel and regulate and

control the use, distribution and price thereof, and to authorize the construction of such plants by others for the same purpose and purchase such powers from others and deliver within such city for its own use for the purpose of selling to its inhabitants doing business within such city and regulate and control the use and price of electrical power so supplied, and to construct, condemn and purchase and operate cable, electric or other railways within the corporate limits of such city or town.

CITIES, FIRST CLASS.

Ballinger's Codes and Statutes, Volume 1, Section 739, § 9. **May authorize and prohibit street railways in streets.**—To authorize and prohibit the erecting and constructing of any railroad or street railroad in any street, alley or public place in such city and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed. To provide for the alteration, change of grade or removal thereof. To regulate the moving and operation of railroad and street railroad trains, cars and locomotives within the corporate limits of such city. To provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads.

§ 14. **Water works; control the use and price of water supply.**—To provide for locating, purchasing or otherwise acquiring water works within or without the corporate limits of said city, to supply said city and its inhabitants with water, or to authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied.

§ 15. **May authorize the erection of gas and electric works.**—To provide for lighting the streets and all public places and for furnishing the inhabitants thereof with gas or other lights, and to erect or otherwise acquire and to maintain same or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and regulate and control the use thereof.

CITIES OF THIRD CLASS.

Ballinger's Codes and Statutes, 1903, Chapter 938, Section 3. **Contract for water supply.**—To contract for supplying the town with water for municipal purposes and to acquire, construct, repair and manage pumps, aqueducts, reservoirs and other works necessary or proper for supply of water for the use of such town or its inhabitants or for irrigating purposes therein and generally to manage and control all such highways and places.

CITIES OF THE FOURTH CLASS.

Section 1011, § 3. **Contract for water supply.**—To contract for supplying the town with water for municipal purposes and to acquire, construct, repair and manage pumps, aqueducts, reservoirs and other works necessary or proper for supplying water for the use of such town or its inhabitants or for irrigating purposes therein and generally to manage and control all such highways and places.

§ 13. **May authorize the laying of tracks and construction of electric light lines.**—To permit under such restrictions as they may deem proper the laying of railway tracks of cars drawn by horses, steam, electricity or other power thereon and the laying of gas and water pipes in the public streets and to construct and maintain and to permit the construction and maintenance of telegraph and telephone and electric light lines thereon.

CORPORATIONS.

Life of corporations.—Time of existence for corporations in this state shall not exceed fifty (50) years.

WEST VIRGINIA.

CONSTITUTION.

Article 6, Section 39. **No special laws incorporating cities and villages under 2,000.**—The legislature shall not pass local or special laws for incorporating cities or villages or amending the charter of any city, town or village containing a population of less than 2,000.

The legislature shall provide by general law for the foregoing and all other cases for which a general provision cannot be so made, and in no case shall a special act be passed where the general law shall be proper and can be made applicable to the case, nor in no case in which courts of jurisdiction are competent to give relief asked for.

Article 11, Section 1. **Corporations created by general laws.**—The legislature shall provide for the organization of all corporations hereafter to be created by general laws, uniform as to the class to which they relate, but no corporation shall be created by special law; provided that nothing in this section contained shall prevent the legislature from providing by special laws for the connection by canal of the waters of the Chesapeake with the Ohio River by line and the James River, Grenbier, New River and Mount Kanawha.

Section 3. All existing charters or grants of special or exclusive privileges under which organizations shall not have taken place, or which shall not have been in operation within two years from the time this constitution takes effect, shall thereafter have no validity or effect whatever; provided that nothing herein shall prevent the execution of any bona fide contract heretofore lawfully made in relation to any existing charter or grant in this state.

Section 5. **Street railways.**—No law shall be passed by the legislature granting the right to construct and operate a street railway within any city, town or incorporated village without requiring the assent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

CORPORATIONS—JOINT STOCK COMPANIES.

Chapter LIV, Code of West Virginia, 1899, page 556. Under this chapter the following corporations may be organized: **Manufacturing, mining, or insurance, or gas companies, water works, etc., railroads and other works of internal improvement** and for any other purpose or business useful to the public for which the firm or co-partnership may be lawfully formed in this state.

Life of.—No corporation, except railroads and others works of internal improvement shall continue for more than fifty years from the date of its certificate of incorporation.

CITIES, TOWNS AND VILLAGES.

Code of 1899, page 468. **May authorize the erection of gas, electric and water works.**—The council of a city, town or village shall have power to lay off, vacate, close, open, alter, curb, pave, and keep in good repair roads, streets, alleys, sidewalks, crosswalks, drains and gutters and improving and lighting the same. To erect or authorize or prohibit the erection of gas works, electric light works and water works in the city, town or village.

Street railways.—The statutes relating to municipalities and the general corporation laws, excepting those pertaining to railroad corporations, do not seem to give any expressed powers for street railway companies to use the public streets and highways, so that if they have such powers they are under Section 10, Chapter LII, of the Code, page 540, which provides that no company shall occupy with its works, streets and the inhabited part of any city, town or village until the corporate authorities thereof shall have consented to such occupation; and under Section 6, Chapter 54, page 572, which provides, "To construct its railroad across, along or upon any stream of water, water course, street, highway, road, turnpike or canal which the route of said railroad shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, road, turnpike or canal thus intersected or touched to its former state and to such state as not unnecessarily to have impaired its usefulness and to keep such crossing in repair. And provided that

in case of the construction of said railroad on highways, roads, turnpikes or canals, such railroads shall either first obtain the consent of the local authorities having control or jurisdiction of the same or condemn the same under the provisions of Section 48 of this chapter.

Act of February 21, 1901, page 81. **Franchises, by whom, when and how they shall be passed; duration of.**—No franchise shall hereafter be granted by the county court of any county or other tribunal acting in lieu thereof or by the council of any city, town or village incorporated under the laws of this state, where an application for such franchise has not been filed at least thirty days prior to the time when it is to be acted upon by such county court or council, with the clerk of such court or council and notice of such application, stating the object of such franchise, shall have been given by publication for thirty days in some newspaper of general circulation published in such county or city wherein such franchise is to be granted. Nor shall such franchise be granted within thirty days after the application has been filed; nor until an opportunity has been given to any citizen or corporation interested in granting or refusing of said franchise to be heard; nor shall any franchise hereafter be granted by any county court or other tribunal acting in lieu thereof or by any council of any city, town or village incorporated under the laws of this state for a longer term than fifty years. Provided, however, that nothing in this act shall prevent the renewal of any such franchise for a term not exceeding fifty years, when the same shall have expired. No franchise hereafter granted for any longer period than fifty years shall be of any force or validity.

WISCONSIN.

CONSTITUTION

Section 31, Article IV. **Special or private laws.**—The legislature is prohibited from enacting any special or private laws on the following cases: For changing the names of persons or constituting one person the heir at law of another. For laying out, paving or altering highways, except in cases of state roads extending into more than one county and military roads, to and in construction of which roads may be granted by congress. For authorizing persons to keep ferries across streams at points wholly within this state. For authorizing the sale or mortgage of real or personal property of minors or others under disability. For locating or changing any county seat. For assessment or collection of taxes or for extending the time for the collection thereof. For granting corporate privileges, except to cities. For authorizing the apportionment of any part of the school fund. For incorporating any city, town or village or to amend the charter thereof.

Section 32. **General laws.**—The legislature shall provide general laws for the transaction of any business that may be prohibited by Section 31, Article IV, and all such laws shall be uniform in their operation throughout the state.

Section 1780, Sanborn & Berryman's Wisconsin Statutes. **Gas companies.**—Any corporation formed under general or special laws for the manufacture of inflammable gas in order to light any city or village, or streets, public places or buildings therein may by the consent of and in the manner agreed upon with the authorities of such cities or village use any street, alley, lane, park or public ground for laying gas pipes or any other purpose, and any such corporation may, by contract duly executed with the proper officers of the city or village not lighted with gas, acquire the exclusive right to manufacture and sell gas for light and lay gas pipes within such city or village or a designated part thereof for such period not exceeding fifteen years, and upon such terms as

may be agreed upon; and shall thereafter have and enjoy such exclusive right according to such contract.

It shall also have power to manufacture and dispose of any and all residual products of its works and to deal in the manufactured articles and may manufacture and sell such gas for heating, culinary and manufacturing purposes, and all laws in force respecting the laying and protection of the mains, pipes, works and property of such corporation shall, as far as applicable, apply to the laying and protection of the mains, pipes, works and property laid and used in carrying into effect the additional powers hereby conferred. Every gas company heretofore organized shall continue to enjoy the rights given by the law under which it was formed, except that it shall not, under any circumstances, have any exclusive right to manufacture or sell gas as against any person or corporation which shall have manufactured and sold gas and lighted houses or streets within the same city or village previous to its organization.

WATER WORKS.

Section 1780 A. Any corporation formed under the general or special law for the purpose of constructing or operating water works in any city or village may make and enter into any contract with such city or village to supply it with water for fire and other purposes upon such terms and conditions as may be agreed upon and may, by the consent of the authorities of such city or village, use any street, alley, lane, park or public place for laying water pipes therein.

ELECTRIC COMPANIES.

Section 1780 B. Any corporation organized under general or special law for the purpose of furnishing heat, light, power or signals by electricity may, with the consent of and in the manner agreed upon with the authorities of any city or village, use any street, alley, lane, park or public ground for constructing, maintaining and operating its lines, with all necessary wires, conduits and appurtenances for the purpose of supplying light, heat, power or signals to such cities or villages or to any building, manufactory, industry or

public or private house therein. The provisions of this section shall apply to any corporation heretofore organized and now operating an electric light plant by the consent of the authorities of any city or village.

It shall be the duty of every person engaged in the transmission of electrical energy to provide by suitable insulation by return wires or other means, against injury to persons or property by leakage, escape or induction of any electric current.

Section 1329. Use of highways.—Any power or corporation may, with the written consent of the supervisors of the town, construct and operate a line of telegraph, telephone or electric wires for the purpose of transmitting light or power along or within the limits of any highway subject to the restrictions and conditions herein contained. All poles shall be set four feet from the boundary line of such highway and all wires strung upon such poles shall be not less than 24 feet above the ground at all crossings and not less than 14 feet above the ground at all other places.

STREET RAILWAYS.

Section 1862. Street railways, use of streets and bridges, freight and passengers.—Corporations for constructing, maintaining and operating street railways may be formed under chapter 86 and shall be governed accordingly. Any municipal corporation or company may grant to any such corporation under whatever law formed or to any person who has the right to construct, maintain and operate street railways the use upon such terms as the proper authorities shall determine of any streets or bridges within its limits for the purpose of laying single or double tracks and running cars thereon for carriage of freight and passengers, to be propelled by animals or such other power as may be agreed on, with all the necessary curves, turnouts, switches and other conveniences.

Section 1863. Extension of street railways along highways.—Any street railway may extend its railway to any point within any town adjoining the municipality from which it derived its franchise and for such purpose may, with the written consent of a majority of the supervisors of such

town, lay and operate its railway upon, across and along any highway, but not so as to obstruct public travel thereon. Corporations may be formed for the purpose of building, maintaining and using railways with rails of wood or iron in any village or town or to extend from any point in one village or town to, into or through any other village or town and for running cars propelled by animals or other power for the carriage of either passengers or freight and for that purpose with the consent of the board of trustees of any village and the written consent of a majority of the supervisors of any town in, into or through which such railway or tramway may extend, may lay and operate their railway or tramway upon, across and along any highway, but not so as to obstruct the common public travel thereon.

CITIES PURCHASING LIGHTING PLANTS.

Section 925, 97 A. **City shall not erect competing plant if owners of such plant willing to sell such to the city.**—Whenever a city shall have determined to own or operate its own lighting plant for the purposes for furnishing light to the inhabitants of such city other than for lighting streets, public buildings and parks and at such time there shall be in operation lighting works owned and operated by a person or private corporation established under authority of such city, such city shall not erect competing works for private lighting, provided the owners of such works shall be willing to sell the same to the city; the price to be paid for such existing lighting works shall be its fair value for the purpose for which it is used included as an element of value the earnings derived therefrom, no portion of such works, however, to be estimated at less than its fair value for any other purpose.

The act then provides as to the notice to be given by owner for sale and the method of valuation and payment, when it cannot be agreed upon by the parties. The act does not apply to cities first class.

For the construction and maintenance of water works every city or village and every corporation formed for such purpose under the law of the state may acquire the title in

fee simple to or such easement in or servitude upon all such lands as may be necessary for the construction and maintenance of such works, and such lands may be acquired by such city or village and compensation made therefor in the manner provided in section 895, 904, inclusive, and by such corporation in the manner provided in the subdivision of chapter 87 entitled "Acquiring land by eminent domain"; and such city or village when authorized by ordinance adopted by a vote of a majority of all the members of council or board of trustees after such ordinance has been submitted to a vote of the people and a majority have voted in favor thereof may purchase or lease the lighting works or both, owned by any corporation in such village or city and having obtained a contract therewith for public service, or obtain the contract of such works by purchasing the stock of such corporation and keeping up its organization.

See also act May 4, 1899, p. 637.

Section 940 B. Franchises, granting of by village.—No franchise shall be granted by any village, board or common council until the application therefor containing the substance of the privilege asked shall be filed with the village clerk and be published at the expense of the applicant in the official village or city which is asked to grant the same.

Section 940 C. Street railway, gas, water, electric works.—No grant shall be made by any village or city mentioned in section 940 J to any person or corporation of a right or franchise to establish, maintain or operate a street railway system, gas or electric plant, water works or telephone system or any other franchises for carrying on business within such village or city where the use of the streets or alleys of such village or city is granted in the franchise, except as herein provided.

Section 940 D. Requirements before granting franchises. Grant cannot be changed without consent of grantee.—Prior to the granting of any franchise the village board or city council shall cause to be prepared full specifications containing the rules and regulations for the maintenance and operation of the plant and for the conduct of the business for which such franchise is to be granted. Said specifications shall contain a maximum rate which may be charged

control the use, distribution and price thereof, and to authorize the construction of such plants by others for the same purpose and purchase such powers from others and deliver within such city for its own use for the purpose of selling to its inhabitants doing business within such city and regulate and control the use and price of electrical power so supplied, and to construct, condemn and purchase and operate cable, electric or other railways within the corporate limits of such city or town.

CITIES, FIRST CLASS.

Ballinger's Codes and Statutes, Volume 1, Section 739, § 9. **May authorize and prohibit street railways in streets.**—To authorize and prohibit the erecting and constructing of any railroad or street railroad in any street, alley or public place in such city and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed. To provide for the alteration, change of grade or removal thereof. To regulate the moving and operation of railroad and street railroad trains, cars and locomotives within the corporate limits of such city. To provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads.

§ 14. **Water works; control the use and price of water supply.**—To provide for locating, purchasing or otherwise acquiring water works within or without the corporate limits of said city, to supply said city and its inhabitants with water, or to authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied.

§ 15. **May authorize the erection of gas and electric works.**—To provide for lighting the streets and all public places and for furnishing the inhabitants thereof with gas or other lights, and to erect or otherwise acquire and to maintain same or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and regulate and control the use thereof.

CITIES OF THIRD CLASS.

Ballinger's Codes and Statutes, 1903, Chapter 938, Section 3. Contract for water supply.—To contract for supplying the town with water for municipal purposes and to acquire, construct, repair and manage pumps, aqueducts, reservoirs and other works necessary or proper for supply of water for the use of such town or its inhabitants or for irrigating purposes therein and generally to manage and control all such highways and places.

CITIES OF THE FOURTH CLASS.

Section 1011, § 3. Contract for water supply.—To contract for supplying the town with water for municipal purposes and to acquire, construct, repair and manage pumps, aqueducts, reservoirs and other works necessary or proper for supplying water for the use of such town or its inhabitants or for irrigating purposes therein and generally to manage and control all such highways and places.

§ 13. May authorize the laying of tracks and construction of electric light lines.—To permit under such restrictions as they may deem proper the laying of railway tracks of cars drawn by horses, steam, electricity or other power thereon and the laying of gas and water pipes in the public streets and to construct and maintain and to permit the construction and maintenance of telegraph and telephone and electric light lines thereon.

CORPORATIONS.

Life of corporations.—Time of existence for corporations in this state shall not exceed fifty (50) years.

lations made by any city or village through, across or adjoining which said line or lines may be proposed to be constructed, construct and maintain any such lines, with all necessary appurtenances, from point to point along or across any public road or highway or bridge or any stream or body of water or upon the land of any owner consenting thereto and from time to time extend the same at pleasure and for such purpose may also acquire lands or any interest therein in the manner provided in this act and may connect and operate its lines with the lines of any corporation engaged in like business within or without the state.

FRANCHISES.

May 21, 1903, p. 612. **Franchises not to be operative for sixty days after passage and on demand of 20 per cent of voters, it must be submitted to a vote of people.**—From and after the passage of this act no ordinance for granting either a street railroad, electric light, gas, water or telephone franchise or the extension of the life of any such existing franchise shall be operative in any city in this state until after 60 days from the date of its passage and if in any such case and during said period of 60 days a number of the qualified voters equal to 20 per cent of the total number of votes cast at the last preceding election in such city shall demand that the ordinance be submitted to a direct vote of all the voters therein; such ordinance shall not be voted until it shall have been submitted and approved by a majority of those having voted upon it. The provision of this section shall not apply to the extension of any existing law or system upon any street or highway, if the term of such extension expires at the same time as the franchise of which it is a part.

In every such case the papers containing the demand for such direct vote shall be filed with the city clerk within the time specified and each signer shall write his occupation and residence after his signature and the genuineness of the signer of such paper must be approved by the affidavit of a qualified voter.

Such submission of an ordinance shall be made at the next

municipal election or at a special election to be held within 90 days of the filing of the demand for a direct vote as the common council may determine.

WYOMING.

CONSTITUTION.

Article 1, Section 30. **Perpetuities and monopolies** are contrary to the genius of a free state and should not be allowed. Corporations being creators of the state endowed for the public good with a portion of its sovereign powers must be subject to its control.

Article 3, Section 27. **Special laws, exclusive privileges.**—The legislature shall not pass local or special laws for the incorporation of cities, towns or villages or change or amend the charters of any city, town or village or grant to any corporation, association or individual the right to lay down railroad tracks or any special or exclusive privilege, immunity or franchise whatever, or amend existing charters for such purpose.

CORPORATIONS.

Article 10, Section 1. The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be amended, altered or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this state may as to such business be regulated, limited or restrained by law not in conflict with the constitution of the United States.

Section 3. All existing charters, franchises, special or exclusive privileges under which an actual and bona fide organization shall not have taken place for the purpose for which it was formed and which shall not have been maintained in good faith to the time of the adoption of this constitution shall thereafter have no validity.

Section 6. No corporation shall have power to engage in more than one general line or department of business, which line of business shall be distinctly specified in its charter of incorporation.

Section 7. All corporations engaged in the transportation of persons, property, mineral oils and mineral products, insurance or intelligence, including railroads, telegraphs, express companies, pipe lines and telephones, are declared to be common carriers.

Article 13, Section 4. **No street passenger railroad, telegraph, telephone or electric light line** shall be constructed within the limits of any municipal organization without the consent of its local authorities.

Act of February 16, 1901, page 74. **Authority to use streets.**—All incorporated cities and towns in the state of Wyoming, whether incorporated or existing under a special charter or a general act, and whether now in existence or hereafter incorporated, shall have power to use or to authorize the use of the streets and alleys of the town by others, with the right to obtain by purchase or condemn in a manner provided by law all necessary lands for the construction, laying and operating of mains or pipes for sewers, gas and water for the use of such cities and towns; and for that purpose to have the power to levy taxes within the constitutional limits of such cities and towns.

CITY OF CHEYENNE.—GENERAL POWERS OF MAYOR AND COUNCIL.

Revised Statutes of Wyoming. Section 1287, §7. They have power to secure the general health of the city, to prevent and remove nuisances and to provide the city with water.

Paragraph 9. **Regulation of lighting plants, street railways.**—To provide for and regulate the lighting of the streets and erection of lamp posts and permit and regulate the running of horse railroad cars or cars propelled by dummy engines, the laying down of tracks for the same, the transportation of passengers thereon and the form of rails to

be used and to grant the right of way through the streets and avenues of said city to any person or persons, company or corporation for the purposes herein mentioned.

Paragraph 14. Gas mains in streets.—To make contracts with and authorize any person, company or association to locate gas works in said city and give such person, company or association the exclusive privilege of furnishing gas to light the streets, lanes and alleys of said city for any length of time not exceeding ten years.

Paragraph 21. Railways.—To regulate depots, depot grounds and places for storing freight and goods and to provide and regulate the passage of railways through the streets and public grounds of the city. To regulate the crossings of railroad tracks and to provide precautions and prescribe rules regulating the same. And to regulate the running of railway engines, cars and trucks within the limits of said city and to provide rules relating thereto and to govern the speed thereof.

Chapter 2, Section 1301. Water works.—The city of Cheyenne in its corporate capacity is hereby authorized and empowered to lease and grant for a term of years to any person or persons or company the exclusive right to construct and maintain a system of water works to supply said city with water for the extinguishment of fires and the inhabitants thereof with water for domestic, manufacturing and other purposes under such conditions as may be just and proper.

LARAMIE.

Chapter 5, Section 1348, §7.—To make regulations to secure the general health of the city and to prevent and remove nuisances and to provide the city with water and to establish a system of sewerage.

Paragraph 9. Use of streets by electric companies and street railways.—To provide for and regulate the lighting of the streets and the erection of lamp posts and permitting and regulating the running of horse railway cars or cars propelled by dummy engines and laying down of tracks for same, the transportation of passengers thereon and the form of rails to be used and to grant the right of way through

the streets and avenues of said city to any person or persons, company or corporation for the purposes herein mentioned.

Paragraph 14. **Steam heating.**—To make contracts with and authorize any person, company, association or steam heating works and apparatus and to give such person, company, association or corporation the exclusive privilege of furnishing gas and electric lights to light the streets, lanes and alleys of said city for any length of time not exceeding ten years, and to grant to the same the right of way for laying or erecting pipes, mains, wires or electrical apparatus.

BUFFALO.

Section 1413, §3. **Lighting streets.**—Cities are authorized to provide for and regulate the lighting of streets and erection of lamp posts.

Paragraph 8. **Water.**—To make regulations to secure the general health of the city and to prevent and to remove nuisances and to provide the city with water.

Paragraph 2. **Railways in streets.**—To regulate depots, depot grounds and places for storing freight. To regulate the passage of railways through the streets and public grounds of the city. To regulate the crossing of railway tracks. To regulate the running of railway engines, cars and trucks within the city and to govern the speed thereof.

SHERIDAN.

Section 1452, §13. **Water.**—To make regulations to secure the general health of the town and to provide the town with water.

RAWLINS.

Section 1506, §3. **Light.**—To provide for and regulate the lighting of streets and erection of lamp posts.

Paragraph 2. **Railways.**—To regulate depots and depot grounds and places for storing freight. To regulate the passage of railways through the streets and public grounds of the city. To regulate the crossings of railway tracks and to regulate the running of railway engines, cars and trucks within the city and to govern the speed thereof.

GENERAL INCORPORATION OF TOWNS.

Section 1545, §6. The town council of a town shall have power to declare what shall constitute a nuisance and to provide, abate and remove the same, to take such measures for the purification of public health as they may deem necessary and to provide the town with water.

Paragraph 21. **Railways in streets.**— To regulate depots, depot houses and places for storing freight and goods and to provide for and regulate the passage of railways through the streets and public grounds of the town. To regulate the crossings of railway tracks and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, cars and trucks within the limits of a town, and to govern the speed thereof and to make other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways and to prevent fires from engines.

Paragraph 33. **Gas and water mains in streets.**— To regulate the openings in the streets and public grounds for the laying of gas and water mains and pipes and the building and repairing of sewers, tunnels and drains; provided that any company heretofore organized under the general laws of this state or any association of persons heretofore and hereafter organized for the purpose of supplying gas or supplying natural gas for general purposes to any town or the inhabitants thereof shall have the right by the consent of the town council (subject to existing rights) to erect gas factories and lay down pipes in the streets or alleys or public grounds of any town, subject to such regulations as in such town may be ordinarily imposed.

Section 1587. Cities having more than 4,000 inhabitants shall be known as cities of the first class.

Section 1636. **Franchises and payments to be made thereunder.**—No contract shall be entered into with any individual, individuals, company or corporation whereby an exclusive right shall be given to any such individual, individuals, company or corporation for any purpose whatever except for supplying said city with water or light. No franchise or right shall be given to any street railway company

or electric or gas lighting or heating company and to any owner of any such company except upon the following conditions, that in any compact for franchise for such purposes it shall be stipulated between the said city and the beneficiary of such franchise that the said city shall have at least one-fifth of all the net earnings and revenues in excess of 6 per cent net profits upon the capital actually invested in the construction, maintenance and operation of the street railway or electric or gas lighting or heating plant.

Section 1637. Gas and electric works.—Cities of first class shall have power by ordinance in addition to the powers hereinbefore granted to make contracts with and authorize any person, company or association to erect gas works, electric or other light works in said city, and any such person, company or association the privilege of furnishing light for the streets, lanes and alleys of said city for any length of time not exceeding ten years.

To provide for the lighting of streets, laying down of gas pipes and the erection of lamp posts and to regulate the sale and use of gas and electric or other lights, the charge therefor and the rent of gas meters within the city; and to require the removal from the streets, avenues and alleys and the placing underground of all telegraph, electric and telephone wires.

Paragraph 32. Water works.—To establish a system of water works and fix the rate of tax to be paid for the use of water furnished by the city or any person or corporation by means of water works.

CITIES OF THE SECOND CLASS.

Cities of a population of 6,000 or more and less than 9,000 are cities of the second class.

WATER WORKS, CITIES AND TOWNS.

Section 1692. Franchises for.—The city or town council of any incorporated city or town within this state shall have power to grant to any corporation organized under the laws of Wyoming for this purpose the right to construct, maintain and operate a system of water works within the cor-

porate limits of such city or town and for that purpose the corporation acquiring such right or franchise to construct such water works shall have the right to the use of the streets and alleys within the corporate limits, to put down and operate all pipes, fire plugs, hydrants and other appliances necessary to the complete operation of such works, subject, however, to the supervision and control of the corporate authorities of such city or town, but the right of franchise so granted shall not be for a period longer than twenty years at any one time.

Section 1697. Any council so granting such franchise or privilege to any corporation to construct and maintain water works shall make such grant upon the express condition that the city or town shall have the right and privilege of purchasing such water works and the franchise so granted, with all appurtenances, within twenty years from the date of the franchise upon such reasonable terms as may be agreed upon between the contracting parties.

Section 1698. A corporation to which such right or privileges shall be granted is hereby authorized and empowered to acquire by appropriation all surplus water in any stream and to purchase prior water rights and to hold and use the water so acquired for the purposes of such corporation, and it shall be empowered to obtain the right of way of lands necessary for reservoirs for such water system and to obtain such right of way and lands. The provisions of the laws of Wyoming relative thereto shall apply as fully in the condemnation thereof as if such provisions were set forth in this chapter.

Section 1699. The corporate authorities of any city or town within this state shall not grant a franchise as provided in this chapter until the question shall have been first submitted to the voters of such city or town and by them approved by a majority of all the votes cast at such election.

STREET RAILWAYS.

Chapter 16, Section 1715. **Franchises for.**—Each incorporated city and town in the state of Wyoming shall have power to license and permit the building and operation of

street railways upon all streets, roads, alleys, lanes, bridges, viaducts, public and private grounds and places in such city or town. And for such purposes may grant rights, franchises and privileges for limited periods of time not to exceed ten years and permit the use of and all kinds of motive power usually or ordinarily employed for the operation of street railways and including such kinds of motive power as shall be hereafter invented or adopted.


Section 1716. **Regulation of.**—The authorities of each of such cities or towns shall have power to regulate the operation of street railways in such manner as to secure the safety of the public and to prevent, prohibit and punish any and all acts or omissions interfering with or obstructing the tracks, cars or works of said railways or their free operation.

Section 1717. The authorities of which said city or town may, in granting franchises as provided in this chapter by ordinance or resolution, establish any and all proper and needful restrictions and conditions in relation to the building and operation of such street railways.

CORPORATIONS.

Section 3029. Three or more persons may form a corporation for the purpose of carrying on any kind of manufacturing, mining, chemical, merchandise or mechanical business, constructing roads, railroads, telegraph lines, digging ditches, building flumes, running tunnels, dealing in real estate or carrying on any branch of business; the term of existence shall not exceed fifty years.

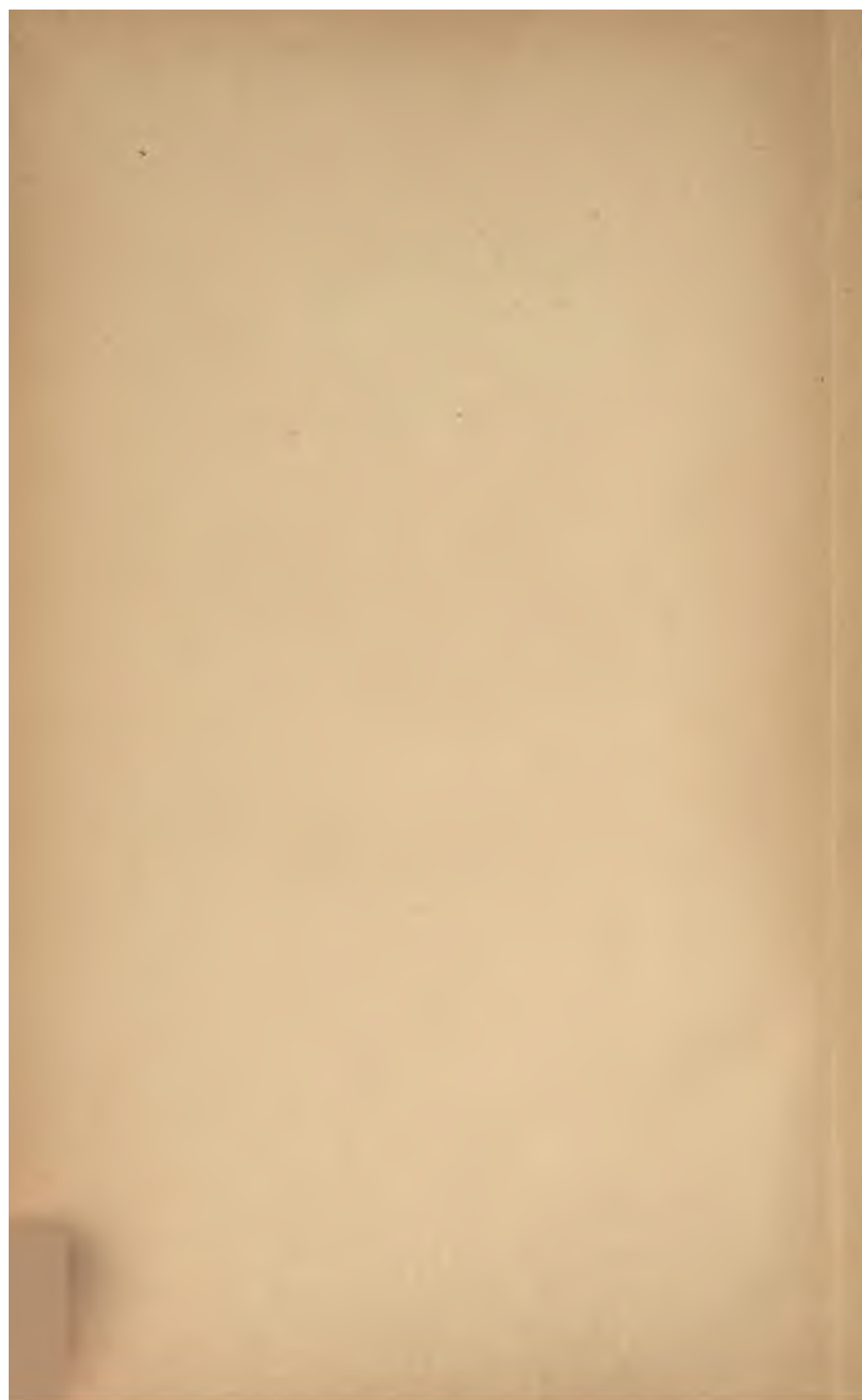
Section 3041. Any corporation organized under the laws of this state for the purpose of gain shall be empowered by the unanimous consent of the stockholders in such corporation to issue and dispose of preferred stock and may stipulate that the holders of such stock shall be entitled to dividends not exceeding 7 per cent per annum in preference to all stockholders.











OCT 27 1942

